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Indictment

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

No. C. 150-51

UNITED STATES OF AMERICA

-v-

MORITZ BROKER, PASQUALE MAISIELLO, JOHN MAISIELLO, HENRY WEGNER, S. BRUKIRER and P. M. TRANSFER INC., Co.,

Defendants.

The Grand Jury charges:

1. On or about the 27th day of January, 1956, in the Southern District of New York, Moritz Broker, Pasquale Maisiello, John Maisiello, Henry Wegner, S. Brukirer and P. M. Transfer Co., Inc., the defendants, unlawfully, wilfully and knowingly entered and introduced and attempted to enter and introduce into the commerce of the United States imported merchandise, to wit, 4,488 watch movements, by means of a false statement contained in a form, entitled Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit, dated January 23, 1956, said false statement being to the effect that two cases marked "I H 74/75" contained tripods; whereas, in truth and in fact, the said two cases contained 4,488 watch movements. (Title 18, United States Code, Section 542.)

(955)

COUNT TWO:

The Grand Jury further charges:

1. On or about the 27th day of January, 1956, in the Southern District of New York, the defendants, Moritz Broker, Pasquale Maisiello, John Maisiello, Henry Wegner, S. Brukirer and P. M. Transfer Co., Inc., unlawfully, wilfully and knowingly received, concealed and facilitated the transportation and concealment of merchandise, to wit, 4,488 watch movements, after importation knowing the said merchandise to have been imported and brought into the United States contrary to law; to wit, Title 18, United States Code, Sections 542 and 545, and Title 19, United States Code, Sections 1001, 1484 and 1485. (Title 18, United States Code, Section 545.)

COUNT THREE.

The Grand Jury further charges:

1. That from in or about the month of May 1954, and continuously thereafter, up to and including the date of filing of this indictment, in the Southern District of New York, Moritz Broker, Pasquale Maisiello, John Maisiello, Henry Wegner, S. Brukirer and P. M. Transfer Co., Inc., the defendants herein, did unlawfully, wilfully and knowingly combine, conspire, confederate and agree together and with each other and with divers other persons to the Grand Jury unknown, to commit offenses against the United States, (956) to wit, to violate Title 18, United States Code, Section 545.

2. It was part of the said conspiracy that Moritz Broker, Pasquale Maisiello, John Maisiello, Henry Wegner, S. Brukirer and P. M. Transfer Co., Inc., the defendants herein, knowingly and unlawfully, with intent to defraud the United States, would smuggle and clandestinely introduce into the United States watch movements and cameras which should have been invoiced.

3. It was further a part of the said conspiracy that Moritz Broker, Pasquale Maisiello, John Maisiello, Henry Wegner, S. Brukirer and P. M. Transfer Co., Inc., the defendants herein, would unlawfully, wilfully and knowingly receive, conceal, facilitate the transportation and concealment of merchandise, to wit, watch movements and cameras after importation, knowing the said merchandise to have been imported and brought into the United States contrary to law, to wit, Title 18, United States Code, Sections 542 and 545, and Title 19, United States Code, Sections 1001, 1481 and 1485.

OVERT ACTS.

1. In pursuance of said conspiracy and to effect the objects thereof, in or about the month of May 1954, in the Southern District of New York, the defendants Moritz Broker, John Maisiello, Henry Wegner and Pasquale Maisiello had a conversation at 74 Carmine Street, New York, N. Y.

2. And further in pursuance of said conspiracy and to effect the objects thereof, on or about the 27th day of January, 1956, a truck operated by the P. M. Transfer Co., Inc. picked up two wooden boxes marked "I H 74" and "I H 75" at pier foot of Smith Street, Brooklyn, New

York, which had been transported from Germany aboard the S.S. Black Falcon.

(957)

3. And further in pursuant of said conspiracy and to effect the objects thereof, on or about the 27th day of January, 1956, in the Southern District of New York, a truck operated by the P. M. Transfer Co., Inc., containing two wooden boxes marked "I H 74" and "I H 75" parked in the vicinity of 74 Carmine Street, New York, N. Y.

4. And further in pursuance of said conspiracy and to effect the objects thereof, on or about the 27th day of January, 1956, in the Southern District of New York, two wooden boxes marked "I H 74" and "I H 75" were placed in the premises located at 74 Carmine Street.

(Title 18, Section 371, United States Code.)

Excerpts from Testimony

(1)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

No. C. 150-51

UNITED STATES OF AMERICA,

v.

MORITZ BROKER, PASQUALE MAISIELLO, JOHN MAISIELLO, HENRY WEGNER, S. BRUKIRER and P. M. TRANSFER INC., Co.,

Defendants.

Before:

HON. J. SKELLY WRIGHT, *District Judge*,
and a Jury.

New York, August 6, 1956,
10.30 o'clock a. m.

APPEARANCES:

PAUL W. WILLIAMS, Esq., United States Attorney, for the Government;

By David Jaffe, Esq. and
Henry J. Formon, Esq., Assistant United States Attorneys.

MOSES H. HOENIG, Esq.,
Attorney for Defendant Moritz Broker;

Moses H. Hoenig, Esq. and
Samuel Feinberg, Esq., of Counsel.

(2) . . .

HENRY WEGNER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Jaffe:

Q. Mr. Wegner, how old are you? (3) A. I am 33.

Q. Where were you born? A. I was born in Vienna, Austria.

Q. Do you have any children? A. I have one boy.

Q. Where do you reside? A. At 6815 Cloverdale Boulevard, Bayside 64, Long Island.

Q. Are you presently awaiting sentence in this case? A. I am.

Q. When did you come to the United States? A. December 25, 1947.

Q. Did you start to work as soon as you came to the country? A. I started to work about one week later.

Q. Whom did you go to work for? A. I worked for Intra-Mar Shipping Corporation.

Q. What is the Intra-Mar Shipping Corporation? A. Foreign freight forwarders and customs brokers.

Q. How long did you work for Intra-Mar? A. Until December, 1950.

Q. What did you do after December, 1950? A. I started to work for Alltransport, Inc.

Q. What is Alltransport? (4) A. A foreign freight forwarder and customs broker.

Q. What is your present position with Alltransport? A. I am the import traffic manager.

Q. Are you still employed by Alltransport? A. I am.

Q. Will you describe your duties as import manager. A. As import manager I am getting the mail in the morning. Then I will bring it downstairs into our import

division. The files are opened, mail is distributed, and after the entries are made by our customs section, the files are coming into our billing department where the bill is made. Then it comes into our delivery department where delivery is made. Delivery instructions are completed and then the file comes back to me to be checked again if all instructions were carried out.

Q. Are you in charge of all the files in the import division? A. Yes.

Q. Do you know a man by the name of Moritz Broker? A. I do.

Q. Do you see him in the courtroom? (5) A. Yes, I do.

Q. Will you please point him out. A. (Witness indicates.)

Mr. Jaffe: Will the record indicate that the witness has identified Moritz Broker at the defense table.

Q. When was the first time that you met Moritz Broker? A. The first time I met Mr. Broker was towards the end of 1953 or the beginning of 1954.

Q. How did you meet him? A. Mr. Broker one day came to the office of Alltransport and wanted our services for clearing his shipments.

Q. Did you give him services for clearing shipments? A. We did.

Q. Do you know a man by the name of Pat Maisiello or Pasquale Maisiello? A. I do.

Q. Do you know a man by the name of John Maisiello? A. I do.

Q. Do you know a trucking concern called the P. M. Transfer Company, Inc.? (6) A. Yes, I do.

Q. When was the first time you had contact with the

Maisiellos and P. M. Transfer. A. The first time that I had contact with either of them and the P. M. Transfer Company was shortly after I started to work for Alltransport, when the firm and the owner of the firm were introduced to me by the import manager at that time.

Q. Was P. M. Transfer doing business with Alltransport? A. Yes.

Q. What type of business were they doing? A. Trucking, transportation.

Q. Do you know whether P. M. Transfer has a Customs House cartman's license? A. Yes.

Q. Where they doing your bonded deliveries? A. Yes.

Q. Were you receiving any money from Pat or John Maisiello for recommending business for P. M. Transfer? A. Yes, I was.

Q. What were you receiving the money for? A. For recommending certain business to them. (7) At the time when I came to the firm, a few months later, they thought that I may have the intention of bringing other truckmen in that I used to work with before, when I worked with the other firm, but since P. M. was doing the business for us for many years before I came to the firm, I said to them as long as——

Mr. Feinberg: Objection. This is hearsay as to what happened before he came to the firm.

The Court: Objection overruled. Proceed.

The Witness: The P. M. Transfer started to offer me a few dollars here and there and they said I should try to keep up the business the way it used to be, that we shouldn't take business away from them, and I said I had no reason to take anything away as long as their deliveries were proper.

Q. In your testimony you used the term "us" and "we." When you used those terms, are you referring to yourself and Alltransport? A. I beg your pardon. I didn't quite understand what you meant.

Q. You used the terms "us" and "we." When you used those terms, were you referring to yourself and Alltransport as the "we" and "us"? A. Yes.

(8)

Q. Did there come a time in the spring of 1954 when you had a conversation with Moritz Broker about trade-marks? A. Yes.

Q. Will you tell us about that conversation, please. A. Mr. Broker one day came to the office, and he had had difficulties with trade-marks before, and during the conversation he mentioned to me that if I could recommend to him a truckman that could help him in bringing in his merchandise and exchanging merchandise and through the trade-mark difficulties that he had had. I didn't quite understand what he meant, and then he said, "Well, I would just bring in merchandise in bond and maybe the truckman could help me in exchange merchandise, put otherwise merchandise into the cases."

I said to him that I do have a truckman that we work with, and I could ask him and see what their reaction would be.

Q. Did you do anything as a result of this conversation with Moritz Broker? A. I did. I had a subsequent conversation with Pat Maisiello of P. M. Transfer, wherein I mentioned (9) the remark and the request that Moritz Broker had made to me, and Pat Maisiello said that Yes, such a thing could be arranged, and we could make——

Mr. Feinberg: Objection. This is not binding on the defendant, who was not present at this conversation.

The Court: Just a minute.

Ladies and gentlemen, generally speaking, under the law, a person who is not a party to a conversation is not subject to any inferences that can be drawn from that conversation. In other words, anything said at such a conversation would be hearsay as to that person and inadmissible in evidence. However, here on trial is a conspiracy case, and it is the law that any statements made, any acts done by any of the alleged conspirators during the conspiracy, in furtherance of the conspiracy, is admissible and binding on all of the conspirators.

The Government is now seeking to lay a conspiracy in which the defendant Broker was a participant. If the Government succeeds in your judgment in laying this conspiracy and showing that the defendant Broker was a conspirator with the others named in the indictment, then the actions of all the (10) conspirators, the statements of all the conspirators, the conversations of all the conspirators, during the conspiracy, in furtherance of the conspiracy, are binding on all the conspirators, including the defendant Moritz Broker, if you find that there was a conspiracy and that Moritz Broker was one of the conspirators.

In order that the Government will not be limited in making out its proof, the Court will admit evidence of this kind and will rule at a later time in the case on whether or not the evidence should be excluded because no conspiracy sufficient for

the jury to predicate a judgment respecting it has been proved.

At this time the Court will overrule any objections made by defense counsel to any evidence of acts or declarations of alleged conspirators outside the presence of the defendant on trial.

You may have a general objection to all evidence of this nature and it will apply to all witnesses, including this witness.

You may proceed.

Mr. Jaffe: May I have the last answer of the witness read?

(Record read.)

By Mr. Jaffe:

Q. Will you continue, please. (11) A. He said that it could be arranged and we could make arrangements then to meet with Mr. Broker to discuss more of the details.

Q. After you had this conversation with Pat Maisiello, did you do anything? A. I had another conversation with Mr. Broker.

Q. Will you tell us about that conversation. A. I told Mr. Broker that I had spoken to the trucking company and that in principle, they said that they would be interested and it could be done, and they would let me know as soon as a meeting could be arranged. Mr. Broker said that would be all right.

Q. After you had this conversation with Mr. Broker, did you do anything further? A. I had a subsequent conversation with Pat Maisiello at which time he specified a day which would be convenient for him and asked I should arrange for a meeting.

Q. Was such a meeting arranged? A. It was.

Q. Did such a meeting take place? A. It took place.

Q. Where did it take place? A. It took place at the premises of the P. M. (12) Transfer Company at 74 Carmine Street.

Q. Who was present at that meeting? A. At that meeting Pat Maisiello, John Maisiello, Moritz Broker and myself were present.

Q. About approximately when did this meeting take place? A. The meeting took place in the earlier part of May, 1954.

Q. Do you have any recollection as to the approximate time of the meeting? A. The meeting was in the evening. It was after 5.30.

Mr. Jaffe: I would like to have these documents marked for identification.

(Marked Government's Exhibit 1 for identification.)

Q. I show you Government's Exhibit 1 for identification and ask you if you have ever seen those documents before (handing). A. I have.

Q. Where have you seen those documents before? A. I have seen the documents before in the office of All-transport.

Q. Were those documents kept in the file of All- (13) transport? A. Yes.

Mr. Feinberg: Objection. I don't think this is a competent witness representing the Alltransport Corporation.

The Court: Objection overruled. He testified he was in charge of the records.

The Witness: Yes, I have seen them.

Q. Were these records kept in the file of Alltransport? A. Yes.

Q. Did you, in fact, write some of the letters that are before you? A. I did.

Mr. Jaffe: The Government offers these in evidence.

Mr. Feinberg: No objection.

(Government's Exhibit 1 for identification received in evidence.)

Q. You testified previously that Moritz Broker had told you he had some trouble with trade-marks. Did there come a time when you wrote letters because of this trouble?

Mr. Feinberg: I object to leading of the witness.

(14)

The Court: Rephrase your question.

Q. Will you look at Government's Exhibit 1 in evidence? A. Yes, sir.

Q. Will you tell the Court and jury the circumstances under which those documents came into existence. A. I was asked by Mr. Broker prior to June 2nd to ask the Customs, the Restricted Merchandise Section, that keeps all records of trade-marks, to inquire if there had been issued recently a corrected list of restrictions and trade-mark protections on cameras, lenses and photographic

supplies, since the latest list that Mr. Broker had at the time was issued in September of 1952. On the request of Mr. Broker, I addressed a letter to the Restricted Merchandise Section on June 2, 1954, to which the Alltransport received a reply by the Restricted Merchandise Section dated June 4th advising that the Bureau has not prepared a listing since that date, September 10, 1952, and further stating that inquiries whether specific items of merchandise bearing registered and recorded trademark will be answered by reference to the files of the office. After the receipt of that letter I advised the Embrohs Trading Company at 1588 President Street, (15) Brooklyn, by letter, June 6th, repeating what——

Mr. Feinberg: I think the letter is in evidence and consequently it does not need any characterization or summation by the witness.

Mr. Jaffe: The Government can read the letter or have it summarized by the witness, either way.

The Court: Are you about finished with what you were saying?

The Witness: Yes.

The Court: All right, you may finish your answer.

The Witness: I answered the Embrohs Trading Company's request of the list by just stating to them that the Government had no such new list and that individual questions would be answered.

Q. Do you know who the Embrohs Trading Company is? A. Yes.

Q. Who are they? A. The Embrohs Trading Company is a company that did business with Alltransport, and Moritz Broker is the owner of Embrohs Trading.

(Government's Exhibit 2 marked for identification.)

(16)

Q. Have you ever seen the signature of Moritz Broker before? A. I have.

Q. Can you identify the signature of Moritz Broker? A. Yes.

Q. Will you look at this document and see you see the signature of Moritz Broker upon it (handing). A. The signature is down here and also on the reverse side of the document.

Q. And you can recognize that as the signature of Moritz Broker? A. That is right.

Mr. Jaffe: I have a photostat of the same exhibit which is certified and comes from the Customs House, if that will save time.

Mr. Feinberg. No objection.

(Government's Exhibit 2 for identification received in evidence.)

(Mr. Jaffe read Government's Exhibit 2 to the jury.)

Q. You were talking about a meeting at 74 Carmine Street in the spring of 1954. A. Yes, sir.

Q. Will you tell us who was present and the (17) conversation that occurred at that meeting? A. Present at the meeting were Pat Maisiello, John Maisiello, Mr. Moritz Broker and myself. I introduced Mr. Broker to Pat and John Maisiello, and then Mr. Broker started to tell them what he had in mind.

Q. Was there any language difficulty encompassed by Mr. Broker at this meeting? A. Yes, there was. Mr. Broker's English was not too fluent at the time and I translated for him.

Q. Were there parts of the conversation which you did not translate? A. There were parts of the conversations that were not translated.

Q. Will you continue with the conversation that occurred at that meeting? A. Mr. Broker told Pat and John Maisiello the idea that he had in mind to bring in merchandise in bond and then exchange merchandise and replace it with other merchandise. During the conversation, Pat Maisiello described how he wanted the cases to be made, how he wanted the straps to be on the cases, and also about the nails, the way the nails should go into the cases. Mr. Broker said that he would make (18) sure that is just done the way Pat Maisiello wanted it.

Q. Was there any conversation at this meeting about payments?

Mr. Feinberg: Objection, if the Court pleases, to leading the witness.

Q. Were there any further conversations at this meeting? A. Yes. The conversation was that at the time Mr. Broker made the offer to Pat, that he would show his appreciation and pay him $250 on a case; but John Maisiello then had a conversation with Pat, and after the conversation John said that he wouldn't want to do it for $250, he wanted $350, and to this figure Mr. Broker agreed. The meeting then ended.

Q. Let me see if I can refresh your memory on the conversation——

Mr. Feinberg: If the Court pleases, if this witness is to be led to direct points, I think that the Government is overstepping its bounds in its prima facie questioning of this witness. It has already occurred a number of times during the course of this interrogation, and I would request that the Government does not lead the witness.

The Court: I think the Government has (19) a right to refresh his recollection. The witness can't be expected just to give the whole conversation or the whole meeting without having help of some kind. However, the Government should restrict itself so that the leading questions are not asked unless absolutely necessary.

Let us proceed.

Q. Did anything further happen after that meeting? A. After the meeting Mr. Broker one day called me to his office, and he said that he had notification from abroad that the first shipment would come, and he gave me at the time the marks of the case and also the name of the boat; and he said that I should let him know as soon as I had some papers, at which time then he would ask me to tell P. M. Transfer, Pat or John, to go ahead and handle the shipment as it was discussed.

(Government's Exhibit 3 marked for identification.)

Q. I show you Government's Exhibit 3 for identification and ask you if have ever seen that before (handing). A. I have.

(20)

Q. Can you tell the Court and jury what that is.

Mr. Feinberg: Objection, if the Court pleases. Just to identify it in one word would be sufficient. This is still not in evidence.

The Court: Can you identify it?

The Witness: This is a file, an Alltransport file, identified by the sticker, identified by the color, identified by our direction stamp as to what type of entries to be made, and I further identify it by by own handwriting and by my date and my stamp.

Q. Can you tell the Court and jury what documents are contained in that file, not by name but what types of documents are contained in the file? A. Foreign bill of lading, ocean bill of lading, forwarding documents, instructions to the truckmen, export declarations and export customs papers, also invoices, bills and check requisitions.

Q. Did anything further happen after you had the conversation with Moritz Broker telling you about the fact that a shipment was on its way? A. Yes.

Q. What happened? A. Alltransport received a letter of instructions from Trans-Lloyd where they referred to the shipment (21) and gave instructions to forward the merchandise in bond to Canada. Also it says in the letter that——

Q. Don't tell us what is in the letter. A. I beg your pardon.

Q. Can you tell us approximately what date those documents were received by Alltransport? A. The middle of June, 1954.

Q. Did you do anything after Alltransport received those documents? A. I did.

Q. What did you do? A. I went to the place of Mr. Broker.

Q. Where is that place? A. That is Broker's Hosiery Shop at 97 Nassau Street.

Q. Did you have a conversation with Mr. Broker at that time? A. I told Mr. Broker that we have received that instruction letter from abroad about that shipment that he had mentioned to me a few days before, and I told him also that the original papers will come through the bank.

Q. Did Mr. Broker say anything to you in that conversation? (22) A. Mr. Broker just said that as soon as I get all the papers, I should follow the instructions, forward it on to Canada, and then tell P. M. to pick up the clocks.

Q. Try to tell us everything that was said in the conversation between yourself and Mr. Broker at 97 Nassau Street after you received those papers. A. The first question that I mentioned to Mr. Broker was the fact that the papers would be presented through the bank, which surely would mean a collection, as we would get papers through the bank, and then Mr. Broker said that if that is the case, then we should just pick up the papers and that he would make sure that payment would be received, that we would be reimbursed. He also said that as soon as we get the shipment, we should then make the entry, forward it on in bond to Canada, and he said that he had information that there should be eight clocks in the shipment and would I find out for him how this shipment could then be entered in Canada for consumption after it comes into Canada because he said he had intention at the time to later on clear it in Canada. I said to Mr. Broker that I do not know, I would try to find that out from our correspondents in Montreal.

(23)

Then also Mr. Broker said that when the shipment is cleared, before it is cleared, I shall tell P. M. to come to his place, pick up the clocks which he had to put into the case when the exchange actually took place.

I went back to the office then——

Q. Just a minute. Can you tell us if you did anything after you had this conversation with Mr. Broker? A. Yes.

Q. What did you do? A. I made a telephone call to Kuhne & Nagel in Montreal and I told them during the conversation that I have a customer that has not opened his office yet in Canada and would be interested to import clocks into Canada, and what would be the problems that he would have in order to clear it, could Kuhne & Nagel act as a representative, could they clear the shipment and could they make an entry in Canada.

They said that technically yes, they could and they would let us know.

Q. Did you do anything after you made that telephone call? A. I told Mr. Broker that as soon as I have some (24) more news, I would tell him.

(Government's Exhibit 4 marked for identification.)

Q. I show you Government's Exhibit 4 for identification and ask you if you can identify this document (handing). A. Yes.

Q. How can you identify that document? A. It is an Alltransport communication memo typed by myself and signed by myself.

Q. And does your signature appear on that? A. Yes.

Mr. Jaffe: The Government offers this in evidence.

Mr. Feinberg: No objection.

(Government's Exhibit 4 for identification received in evidence.)

(Mr. Jaffe read Government's Exhibit 4 to the jury.)

Q. Did you do anything further about this shipment, Mr. Wegner? A. Yes.

Q. What did you do? A. The papers were presented by the bank and our (25) bookkeeping department asked me if I knew anything about it.

I said to the bookkeeping department, "Yes, this is a shipment, Moritz Broker of Embrohs Trading is interested," and that we would be reimbursed and we should pay the money to the bank in order to obtain the documents. It was done, and then I told Mr. Broker about it, that we have the documents. Also I advised P. M. Transfer about the approximate arrival date and said to him that he would receive the pickup instructions from us as soon as the entry was passed, and also told him to make sure to pick up the clocks from Mr. Broker.

Q. Will you please pick out the delivery instructions for P. M. Transfer (handing). A. Yes (handing to counsel.)

Mr. Jaffe: Your Honor, if Mr. Feinberg or Mr. Hoenig will step to the bench, maybe we can expedite a large number of matters in putting in documents and save some time.

The Court: Suppose you show that to him. Maybe he will have no objection.

Mr. Jaffe: Maybe we can put in the whole file.

(26)

Mr. Feinberg: Before even looking at the documents, which of course we will do in a moment, I would like to object to this line of testimony and ask that all testimony with respect to this shipment be stricken on the ground that it is charged in not one of the counts of the indictment nor in any of the overt acts set forth in the indictment. Consequently, it would either be too remote in time or not connected with this defendant or certainly at least of surprise to the defendant.

The Court: It is covered by count 3. The time is after March, 1954, which is the time of the alleged conspiracy.

The objection is overruled. Let us proceed.

Mr. Jaffe: At this time the Government will offer the whole file on this shipment into evidence.

Your Honor, we have a large number of files of the same type. I am more than willing to let Mr Feinberg or Mr. Hoenig look at them during the luncheon recess or after we have recessed this afternoon, after court hours.

The Court: What is counsel's position with respect to the Government's offer. The Government has (27) offered Exhibit 3. Have you had an opportunity to study it, Mr. Feinberg?

Mr. Feinberg: Just part of it. As a matter of fact, some of it is in German apparently, and I am not thoroughly conversant with that language, and some of it is as recent as July of this year, and what pertinence that can have to this case, I fail to follow.

Not having completed it, I would go along with Mr. Jaffe's suggestion that perhaps during the luncheon recess we might be able to go through it.

The Court: Suppose you proceed with those parts of it that you wish to use in connection with this witness.

In order to save the jury's time, perhaps it would be a good idea to let Mr. Feinberg have any documents you intend to introduce into evidence and let him study them at his leisure so that we can have any objections that he wants to make to the documents without delay.

Mr. Jaffe: Your Honor, Mr. Feinberg or Mr. Hoenig can come to my office at any time during recess or after court hours.

Apparently there is no objection as to the (28) delivery instruction, your Honor.

Mr. Feinberg: Oh, no. I would like to hear more about this. I know nothing about this. I would like to find out about it.

By Mr. Jaffe:

Q. Can you identify a document on Alltransport stationery headed "Delivery Instruction"? A. Yes. It is a regular delivery instruction which is used on each and every import shipment in Alltransport.

Q. Is that made out by Alltransport? A. That is correct.

Q. Kept in the regular course of business of Alltransport? A. Yes.

Mr. Jaffe: The Government offers it in evidence, your Honor.

Mr. Feinberg: I think an inadequate foundation has been laid for the introduction of books and records in the regular course of business when they attempt to do that through this witness, who is personally involved in this case, and who is serving in a dual capacity. He wears one hat as an employee of Alltransport and he wears another hat as a defendant, not on trial, but the Government's witness. I think (29) there is much to be said about this thing from a foundation point of view which cannot adequately be covered by this man's testimony as to the accuracy of the records they seek to introduce through his testimony.

The Court: Under the Business Records Act they are admissible. He says he is the custodian of those documents, that they were kept in the course of business, and it was the custom of Alltransport to keep such records in the regular course of business.

Is that correct?

The Witness: Correct, sir.

The Court: I will overrule the objection. Proceed.

(Marked Government's Exhibit 3-A.)

(Mr. Jaffe read Government's Exhibit 3-A to the jury.)

Mr. Feinberg: Your Honor, I offer objection again. This is apparently not the original document. If this is a customs entry, there should be an original customs document and there should not be secondary evidence introduced. We don't know who the "Maislin Brothers" is.

The Court: Objection overruled. It is part of the record.

(30)

Q. After the delivery instructions were given to P. M. Transfer, did you have any conversation with any of the Maisiellos? A. Yes.

Q. Will you please tell us about that conversation. A. I was told by Pat a few days later that he had difficulties, he couldn't possibly get eight clocks into the case, the case was far too small, and couldn't accommodate more than a total of four. Also that the straps and the nails and the construction of the case was not as he had told Mr. Broker at the first meeting. I had a subsequent conversation with Mr. Broker where I relayed this information and also the fact that we are faced now with having only four clocks in the case whereas eight should have been there.

Mr. Broker said, well, he couldn't do anything, "What can I do? Nothing at all. See what you can do and even if you would have to forfeit the duty in Canada."

I wrote a letter to Kuhne & Nagel and I told them about it, that we have received notification from abroad that instead of eight, they only had four, and that we have discussed it with the representative here in New York and we would be willing to forfeit the (31) duty rather than go through the procedure of issuing new voices.

(Government's Exhibit 5 marked for identification.)

Q. I show you Government's Exhibit 5 for identification and ask if you can identify that document (handing). A. I can.

Q. How can you identify that document? A. Alltransport stationery, written by me and signed by myself.

Q. Does your signature appear on there? A. It does.

Mr. Jaffe: The Government offers this in evidence, your Honor.

Mr. Feinberg: May I have preliminary interrogation at this time with reference to the course of conduct and the regular use or introduction of Alltransport in this paper? I felt the same way about all the papers that the Government has offered so far and if I can inquire into this one, perhaps it will save some time. May I be permitted?

The Court: Yes.

(32)

Preliminary cross examination by Mr. Feinberg:

Q. Were you instructed by any of the officers of Alltransport, Inc. to make this paper offered as Government's Exhibit 5 for identification (handing). A. I was not.

Q. Did you type this letter yourself? A. I did.

Q. Did you send this letter out? A. I did.

Q. Would you explain how the original of this letter is in Alltransport's file.

Mr. Jaffe: Objection. No one said that the original of this letter was in Alltransport's file, and it was not offered with the Alltransport file.

The Court: Mr. Feinberg, that is not part of Exhibit 3. This is completely different from Exhibit 3.

Mr. Feinberg: I thought it was pulled out of the same folder.

The Court: It isn't.

Q. Did Alltransport in its file have a copy of this letter, too? A. It should.

Q. Do you know whether it does? (33) A. I do not.

Mr. Feinberg: In other words, this is not Alltransport's file?

Mr. Jaffe: You are questioning the witness.

Mr. Feinberg: I got the impression that this was Alltransport's file.

Mr. Jaffe: No one stated that.

Mr. Feinberg: There is no objection to that exhibit.

(Government's Exhibit 5 for identification received in evidence.)

Direct examination resumed by Mr. Jaffe:

Q. While we are on the subject brought up by Mr. Feinberg, were you asked where the copy of this letter was? A. I was.

Q. What was your answer to that question? A. The answer is that it should be in the file.

Q. When you were questioned in the office of the United States Attorney, did you state that you believed that you had destroyed the copy of this letter in the Alltransport file? A. I did.

Q. And this is the original letter that you sent (34) out? A. Yes, sir.

(Mr. Jaffe read Government's Exhibit 5 to the jury.)

Q. I again show you Government's Exhibit 3 for identification and ask you to pick out of that a document dated

June 23, 1954, entitled "Check Requisition" (handing). A. Yes (handing to counsel.)

Q. Is that a document kept in the files of Alltransport? A. Yes.

Q. Is that kept in the regular course of business of Alltransport? A. Yes.

Q. Is it the custom of Alltransport to keep such a document? A. It is.

Q. Was that made in the regular course of business of Alltransport? A. Yes, sir.

Mr. Jaffe: I offer this document in evidence at this time.

Mr. Feinberg: Objection is made to this on the ground that there appears to be no connection whatever (35) either with the indictment or with the testimony already had.

The Court: Let me see it.

(Mr. Jaffee handed the document to the Court.)

The Court: Objection overruled. The document is received in evidence.

(Marked Government's Exhibit 3-B.)

Q. Will you tell the Court and jury what Government's Exhibit 3-B is. A. Exhibit 3-B is a check requisition which is made by the import department and then given to our bookkeeping department for the purpose of issuance of a check. It is a check payable for the ocean freight payable to the United States Lines. It is charged to Embrohs Trading and receipted by the United States Lines.

Q. Will you look at the document dated August 8, 1954 addressed to Kuhne & Nagel, 410 St. Nicholas Street, Montreal? A. What date did you say?

Q. I meant September 8, 1954. A. Yes.

Q. Is that a document kept in the regular course of business of Alltransport? (36) A. Yes.

Q. Is it a document made in the regular course of business of Alltransport? A. It is.

Mr. Jaffe: I offer this document in evidence, your Honor.

Mr. Feinberg: I must offer objection to this on the ground that it does not appear to be related to the issues before the Court and jury and it talks about return check to, I think it is, Importer Wegner.

Mr. Jaffe: It does not refer to Importer Wegner. It says, "Imp. Wegner." You are inferring things from a document, Mr. Feinberg, which is not even in evidence at this time.

The Court: The objection is overruled. The charge is to the defendant's company. Let the document be admitted in evidence.

(Marked Government's Exhibit 3-C.)

Q. Will you tell the Court and jury what Exhibit 3-C is. A. Document 3-C is a check requisition requested by the import department in payment of a bill by J. W. Mills & Sons, who by the way are identical with Kuhne & (37) Nagel in Montreal, for storage charges on the case ET75 and charged to Embrohs, Brooklyn.

Q. Will you pick out the document dated August 24, 1954, check requisition. A. Yes (handing to counsel.)

Q. Is this document made in the regular course of business of Alltransport? A. Yes.

Q. Is it kept in the regular course of business of Alltransport? A. Yes.

Mr. Jaffe: I offer this document in evidence.

Mr. Feinberg: Same objection is made to this, your Honor.

The Court: Same ruling.

(Marked Government's Exhibit 3-D.)

Q. Will you look at Government's Exhibit 3-D in evidence and tell the Court and jury what this document is (handing). A. This document is a check requisition requested by the import department in payment of a bill of J. W. Mills for the customs clearance, including customs duty, on one case of clocks shipped from New York and charged to Embrohs Trading.

(38)

The Court: We will recess now until 2.15.

(Recess to 2:15 p. m.)

HENRY WEGNER resumed.

Direct examination continued by Mr. Jaffe:

Q. Mr. Wegner, did you receive any money from Mr. Broker as a result of this shipment? A. Yes, I did.

Q. Will you tell the Court and jury what money you received from Mr. Broker? A. I received from Mr. Broker $100 in cash for the handling of the shipment and then I received from Mr. Broker also——

Q. Was that $100 for you personally? A. That is right.

Q. Continue, please. A. Then I also received about $145 in cash in payment of the bank charges in Canada and the handling expenses.

Q. What did you do with this approximately $145 that you received from Mr. Broker? A. I handed the cash over to our bookkeeping department in payment of the bills.

(Government's Exhibits 3-E and 3-F marked (39) for identification.)

Q. I show you Government's Exhibit 3-E for identification and ask if you have ever seen that letter before (handing). A. Yes, I have.

Q. Did you send that letter? A. I did.

Q. Did you write that letter? A. I did.

Q. Was the original sent to the addressee? A. It was.

Q. Will you look at Government's Exhibit 3-F for identification. Did you write that letter? A. I did.

Q. Did you send the original of that letter to the addressee? A. Yes, I did.

Q. Are the copies of those letters kept in the regular course of business of Alltransport? A. Yes, they are.

Mr. Jaffe: Exhibit 3-F is in German, your Honor.

Q. Mr. Wegner, do you read and write German? A. I do.

(40)

Mr. Jaffe: I offer these in evidence.

Mr. Feinberg: Objection is offered to Exhibit 3-E for identification by virtue of the fact that there is nothing contained therein binding on this defendant, and 3-F for identification is written in a language that I don't understand, and from what I can glean does not contain anything referring to

dealing with, or pertaining to the defendant Broker.

Mr. Jaffe: They pertain to this shipment, your Honor.

The Court: Those two exhibits pertain to the shipment you have been describing?

The Witness: Yes, your Honor.

The Court: Objection overruled.

Mr. Feinberg: And I make the further objection that there has been no foundation laid to indicate that it has been pursuant to any instruction by the defendant Broker.

The Court: All right, same ruling.

(Government's Exhibits 3-E and 3-F for identification received in evidence.)

Mr. Jaffe: For the record, and pursuant to your Honor's instructions, the Government attorneys were in their offices all throughout the lunch hour waiting (41) to show the files to defense counsel.

Mr. Feinberg: I wish Mr. Jaffe would express himself in a louder voice.

Mr. Jaffe: I said as to the objection about being in German, we were in our office during lunch hour waiting for you.

Mr. Feinberg: I have been here for quite some time, Mr. Jaffe, waiting for the exhibits.

The Court: We won't get to that now. However, the Court is going to instruct counsel for both sides to get together on these documents to save the jurors' time. With reference to Government counsel, if you will number these exhibits in the order in which you want to identify them, it will save a lot of time. You make a list of these ex-

hibits and give one to the clerk so that he will know what is going on as well. Counsel for the defendant will look at this document tomorrow morning.

In other words, this case is going to be adjourned until tomorrow afternoon because the Court has another matter tomorrow morning. So if counsel for the defendant will report to the district attorney's office tomorrow, then the documents will be available to counsel so that he can study them at his leisure, (42) and I think that will be helpful both to counsel and the jury.

(Mr. Jaffe read Government's Exhibit 3-E to the jury.)

By Mr. Jaffe:

Q. I show you Government's Exhibit 3-F in evidence and ask you to translate that letter (handing).

Mr. Feinberg: I will object to any translation offered by this witness. I would request that an official interpreter of the Court be used to translate any documents in a foreign language.

The Court: Did you write the document yourself?

The Witness: I did.

The Court: And you are voluble so far as English and German are concerned?

The Witness: I am.

The Court: Objection overruled. Read it to the jury.

The Witness: The letter is dated June 6, 1955, addressed to Hans Schmid, Rupprechtstrasse in

Munich, Germany, referring to his letter of the 28th of May, 1954:

"We refer to shipment case 4202 which we (43) received through Trans-Lloyd Antwerp on reference 279 418 of the American Defender on June 30, 1954. In accordance with instructions the shipment was forwarded in transit to Canada with further instructions to deliver the case only against the presentation of the original forwarder's receipt which you, Hans Schmid, your firm, dated the 28th of May. Since we are still receiving storage charges from our correspondents in Canada, we would very much appreciate if you could advise when this case would be taken up and also possibly the name of the ultimate consignee. We are obliged to your early reply, sincerely yours, Alltransport, Inc., Henry Wegner, Import Department."

Mr. Jaffe: At this time I would like to offer in evidence the cover file which was marked Government's Exhibit 3 for identification.

Mr. Feinberg: I have asked Government counsel to inform me whose folder or face this is, and he directed me to the Court.

The Court: Suppose you answer that question.

The Witness: This is the folder kept by the Alltransport and opened by Alltransport.

(44)

By Mr. Feinberg:

Q. And whose pencil notations or ink notations are contained on the face of this (handing)? A. These pencils are written by the Customs Division when they check

every day in the newspaper when the steamer would arrive as to delays. The stamp is——

Q. That isn't my question. Are they made by Ailtransport or by you? A. This is made by the Customs Division of Alltransport (indicating). This is made by myself (indicating).

Q. All in Alltransport? A. Yes.

Q. Everything contained on this was made in the offices of Alltransport? A. Correct.

Mr. Feinberg: No objection.

(Government's Exhibit 3 for identification received in evidence.)

By Mr. Jaffe:

Q. Did there come a time when you had a conversation with Mr. Broker about the name Embrohs and the (45) symbol ET? A. Yes, there was.

Q. Will you tell the Court and jury the conversation you had with Mr. Broker? A. When I went to the place of Mr. Broker——

Mr. Feinberg: If your Honor pleases, I have been allowing without objection testimony which is quite vague as to time and place and purpose, but I think that the time has come when the witness should identify with greater specificity when and where any such of these conversations occurred.

The Court: Suppose you do that.

Q. Do you have a recollection of the approximate date of this conversation you are talking about? A. The approximate date of this conversation was after July 1st.

Q. Of what year? A. Of 1954.

Mr. Feinberg: I will renew my objection as to form and move to strike the answer as too vague—after July 1st.

The Witness: May I correct myself—between July 1st of 1954 and the early part of August, 1954.

Q. Do you recollect where this conversation took (46) place? A. At Broker's Hosiery Shop at 97 Nassau Street.

Q. Will you tell us what the conversation was? A. I told Mr. Broker about the fact that the marks are ET and he said, well, he can't help that, it doesn't matter, and he would see that in the future the marks would not be ET. Also I mentioned to Mr. Broker, after he objected to the fact that I had put his name on check requisitions, that there was no other way for me possibly to ask our bookkeeping department to pay money to a bank on demand without having an actual consignee mentioned on a check requisition.

Mr. Feinberg: Is that all part of the conversation in July? I am a little bit lost.

The Court: I think the witness is still talking about the conversation of July. Is that right?

The Witness: That is correct.

The Court: Proceed.

The Witness: Then Mr. Broker said I shouldn't have mentioned the name on it, and I explained to him again that there was no other way for me to do it but to have his name mentioned because the bookkeeping just doesn't pass on any requisitions or any payments to anyone without having an actual consignee mentioned.

(47)

Q. Did you receive any payment from the Maisiellos for this shipment? A. I did.

Q. What did you receive from the Maisiellos? A. I received from John Maisiello $100.

Q. Did you have any conversation with Pat Maisiello about this shipment after it had gone through? A. Yes.

Q. What was that conversation? A. Pat Maisiello mentioned——

Mr. Feinberg: Objection, if the Court please, bad in form.

The Court: Objection overruled. Answer the question.

The Witness: Pat Maisiello mentioned the fact that there is certainly a weight difference due to the fact that he could only put four clocks into the case after he had made the exchange with the merchandise that was originally in the case and then substituted clocks for the other merchandise, and he also mentioned the fact that the straps were too tight and that the nails were also not put in the right way as he had discussed at the first meeting with Mr. Moritz Broker.

(48)

The Court: Give the date and time of that conversation.

The Witness: The time was in the evening after 5:30. The date was also between July 1st, 1954 and the beginning of August.

The Court: And where?

The Witness: In the office of P. M. Transfer, 74 Carmine Street.

Henry Wegner—for Government—Direct

Q. Did there come a time when the same type of activity, as you testified to as to the first shipment, was suggested as to a second shipment? A. Yes, there was.

Q. Will you tell the Court and jury the approximate time of this second shipment? A. The approximate time of the second shipment was August, 1954.

Q. Will you tell the Court and jury about the conversations that took place about the second shipment and between whom these conversations took place. A. The first conversation took place between Mr. Moritz Broker and myself in the Broker Hosiery Shop at 97 Nassau Street when he called me and mentioned to me that he had received information from abroad about a second shipment. He mentioned at the time the (49) marks and the numbers and also the name of the ship, and he said to me that I should advise him as soon as we have received documents, and also that these documents would not come through the bank anymore. We received then the documents——

Q. When you say "we", whom do you mean by "we"? A. Alltransport.

Q. Continue, please. A. Alltransport received the documents from abroad with the name of the ship and the marks and numbers. I advised subsequently Mr. Broker—

Q. Just a minute. That is all you were asked. A. I am sorry.

(Government's Exhibit 6 marked for identification.)

Q. When you received the documents from abroad, did Alltransport make out the file on that shipment and those documents? A. Yes, Alltransport opened a file.

Henry Wegner—for Government—Direct

Q. I show you Government's Exhibit 6 for identification (handing). Is that the file that Alltransport opened on that shipment? A. It is, sir.

(50)

Mr. Jaffe: The Government offers the file in evidence. It is just the case file, your Honor, so that there won't be any mistake about it.

At this time we are only offering the file jacket, your Honor.

Mr. Feinberg: Am I correct in assuming that the Government is representing this as containing markings only made in Alltransport?

Mr. Jaffe: The Government has represented that this is a file of Alltransport. That is the only thing the Government has represented.

Mr. Feinberg: This is the jacket you mean?

Mr. Jaffe: The jacket of Alltransport.

Mr. Feinberg: I will object to its offer in evidence at this time until such time as the Government determines whether the markings contained thereon are supposed to be the markings made by Alltransport and in its course of business.

Q. Will you look at the jacket of Government's Exhibit 6 for identification and can you identify the writings on that jacket? A. Yes, I can.

Q. Who wrote on that jacket? A. I did.

(51)

Q. Is there anyone else's writing on that jacket? A. The writing of our export department up here in pencil (indicating).

Q. Any other writings? Look at the jacket carefully. A. There is no other writing.

Q. That is your handwriting? A. That is correct.

Mr. Feinberg: My objection is now limited only to the purported writing of the export department contained on this jacket.

The Court: That is overruled.

(Government's Exhibit 6 for identification received in evidence.)

Q. Did you do anything as a result of receiving the documents you have just testified about? A. Yes. I did.

Q. What did you do? A. I went to the Broker Hosiery Shop at 97 Nassau Street and I told Mr. Broker that we had received the papers and Mr. Broker said, "Go ahead, do it the same as you did it on the other shipment. Get the orders to P. M. Transfer and tell John or Pat to pick up the clocks that he should substitute for (52) the other merchandise."

Q. After that conversation with Mr. Broker, did you do anything? A. I advised subsequently P. M. Transfer about the expected shipment.

Q. Did this shipment go through in the normal course of events as the other shipment had gone through?

Mr. Feinberg: Objection, if the Court pleases. It calls for a characterization and conclusion.

The Court: Objection sustained.

Q. Did there come a time that you made a telephone call to a pier in the Port of New York as a result of this shipment? A. Yes.

Mr. Feinberg: Objection. Again there is a conclusion of law called for.

The Court: Objection overruled. He said yes. Let us proceed.

Q. Whom did you call? A. Before I called, I had——

Q. Just answer the question. A. Whom I called? I called a delivery clerk on the pier in Hoboken and I asked the delivery clerk if all the papers were there on the pier and if the (53) shipment would be ready to be picked up. The delivery clerk checked the records and then he mentioned that the papers were on the pier, but the case ET turns out CG, and did not contain clocks but cameras.

I then went to the office of Mr. Moritz Broker at Broker's Hosiery Shop at 97 Nassau Street, and I told him about it, exactly what the delivery clerk had told me, that the case turned out CG, which was a mark that Mr. Broker had mentioned to me previously, that the shipment should have been marked CG, and actually he did not understand how the case was marked ET in the first place.

Then Mr. Broker said, "Well, don't worry about it. I will see that everything will be all right."

When I at the time asked Mr. Broker how he was sure that everything was all right, and Mr. Broker eased my mind at the time by saying I shouldn't worry at all, because he had always taken the necessary precautions for any such things that may occur may happen, that he and Mr. Brukirer in Munich, Germany, had a common friend in the German customs in Munich, supposed to be the chief of the German customs, whose (54) name Mr. Broker did not reveal, who knew all about the shipments, who actually never completed any German export papers until

such time as he had received word that the other shipment had cleared here in America, and that in such an emergency, if other merchandise would be discovered, he would always make the necessary corrections in the export papers so that there is no possibility of any detections, and he also mentioned at the time that he is quite——

(55)

Mr. Feinberg: I will object to any mentioning. He either said or he didn't say. He didn't mention. If there is conversation, I would like to have all of it.

The Court: Give as much as you can remember.

The Witness: Mr. Broker also said at the time that he had experience with these things before when he was still in Europe; that he had shipments sent from the United States to Germany by means of parcel post——

Mr. Feinberg: If the Court please, I will object to this as not within the confines of the indictment and not within this particular conspiracy.

The Court: Objection overruled. Proceed.

The Witness: Mr. Broker then described how the thing was done in Europe, that shipments were sent by parcel post from the United States to Europe, and that he had the necessary contacts in post offices, and that merchandise was sent in double wrappers, one bearing the foreign wrapper, which was then removed by the postal clerk. Underneath you would have a domestic address, and it would then automatically be reposted without the assessment of any duties or taxes in Europe.

(56)

Q. What did you do after that conversation, Mr. Wegner? A. After this conversation, Mr. Broker said that he had also received notification about a second shipment, which should come also by Holland-America Line boat; but at that time he only knew the marks and the name of the boat, but we did not have any documents at all. We received—by "we" I mean Alltransport—we received an arrival notice from the Holland-America Line, showing the name of the steamer and the marks and the numbers, but not having received an original bill of lading, which is needed to handle a shipment, I went again to the place of Mr. Broker at 97 Nassau Street and I asked him if he had received the original bill of lading from abroad directly. He said he hadn't, but we should wait a few days, either he may receive it in the mail or Alltransport may receive it. A few days later we did not receive the bill of lading. I went again to the place of Mr. Broker at 97 Nassau Street, and Mr. Broker said that he would see that the original bill of lading would be released to Alltransport respectively to the Holland-America Line.

A few days later, when I called the Holland- (57) America Line, inward freight department, and referred to the shipment, I was advised that they had received a telegram from Transllloydanvers releasing the shipment to us without the surrender of the original bill of lading. Then followed the instructions that I received from Mr. Moritz Broker on the second shipment, to make a Foreign Trade Zone entry and then await further instructions for this shipment as well as for the other shipment for which the Holland-America Line delivery clerk had declared that this shipment contained cameras and not clocks and turned out CG.

(Government's Exhibit 7 marked for identification.)

Q. I show you Government's Exhibit 7 for identification and ask you if you have ever seen that document before. A. Yes, I have.

Q. Where did you see that document before? A. In the office of Alltransport.

Q. Was this document kept in the regular course of business of Alltransport? A. Yes, it is.

Q. Was it received in the regular course of (58) business of Alltransport? A. Yes, it was.

Q. I ask you about the first document and ask you have you ever seen that document before. A. Yes, I have.

Q. Where did you see that document? A. In the office of Alltransport.

Q. Was that received in the business of Alltransport? A. Yes, it was.

Q. Was it kept in the regular course of business of Alltransport? A. Yes, it was.

Q. Are these documents kept separate from the file that was marked as a Government's exhibit? A. Yes. All wires are accepted, copies given to the original departments. Original wires and cables are kept in a separate file.

Mr. Jaffe: The Government offers these two documents in evidence, your Honor.

Mr. Feinberg: Objection is offered to both of these by virtue of the fact that it is not the best evidence. There are originals, if this ever was sent, either with Western Union or whatever cable company (59) was used. There has been no corre-

lation made between these and the shipments spoken of, and, thirdly, the entire file referred to should have been offered in evidence rather than just this.

The Court: Are those part of the records of Alltransport?

The Witness: Yes, sir.

The Court: Do those documents there refer to a particular shipment that you have been discussing?

The Witness: They refer to the shipment that I have been discussing now.

The Court: The objection is overruled. Let us proceed. It will be admitted in evidence.

(Government's Exhibit 7 for identification received in evidence.)

(Mr. Jaffe read Government's Exhibit 7 to the Jury.)

Q. Do you know what that word means (indicating)? A. Yes, I do.

Q. What does that mean? A. That is the German word for the City of Munich.

Q. Do you know what Transloydanvers means? A. Transloydanvers is Trans-Lloyd Antwerp. (60) That is the cable address.

Q. In other words, it was sent from Munich, but the signature is Trans-Lloyd Antwerp? A. Yes.

Q. Do you know what happened to these two cases that we have been talking about? A. Yes.

Q. What happened? A. After the receipt of the cable to return the cases to Bremen, I had a conversation with Mr. Broker at 97 Nassau Street, and Mr. Broker said, "Yes, it is O. K. Ship them back. I know about it."

When I asked Mr. Broker who would bear all the expenses, he said, "You just bill everything to Translloyd and I will see that Alltransport will be reimbursed."

The two shipments involved were then, those files, handed to our export department with instructions to return the shipment in accordance with the instructions of the cable.

> Mr. Jaffe: Your Honor, we have those files in court if they are needed for any purpose. Mr. Feinberg requested me at one time to have certain files in court. I have those files in court in case they are (61) to be used by the defense.

Q. After the two CG cases were exported, did you have a conversation with Pat Maisiello? A. I did.

Q. Approximately how long after the two CG cases were exported? A. Very shortly after the cases were exported.

Q. Will you tell us about that conversation. A. In the conversation I advised——

> The Court: Where was this conversation?
> The Witness: At P. M. Transfer's premises at 74 Carmine Street.

I told Pat, whom I told before about the matter, of the telephone call with the delivery clerk, and I told Pat that these two cases are now, in accordance with instructions, returned to Germany.

Pat at the time said I should make sure and tell Mr. Broker that if these cases should ever come back to the

Henry Wegner—for Government—Direct

Q. You said if these two cases ever came back to the United States they would not be returned. Did you mean cases or merchandise? A. Cases and the merchandise in the cases.

(62)

Q. Will you continue, please. A. Also Pat Maisiello asked me to make sure and tell Mr. Broker that under the no circumstances should these cases come back to any pier of the Holland-America Line where they were discovered to have wrong contents, different marks. He preferred if they would come to Pier 59, North River, which is owned by the United States Lines, or the foot of 17th Street in Brooklyn, which is owned by the United States Navigation. Also he said to me I should make sure to tell Mr. Broker that the cases are of the right size to accommodate the contemplated eight clocks to be put in for the substitution, and also that the straps should not be too tight, and again the matter of the nails came up.

Subsequently I went to Mr. Broker at 97 Nassau and I relayed the information that I have received from Pat Maisiello. Mr. Broker said he would make sure that new cases are used, and he would also make sure that no boats would be used that dock at the piers of the Holland America Line. Mr. Broker asked me if I could tell him which ships dock at 17th Street or Pier 59, North River, and I gave him the information.

(63)

(Government's Exhibit 8 marked for identification.)

and ask you to look at it closely and ask you if you have ever seen this file before. A. Yes, I have.

Q. Where did you see that file before? A. At the office of Alltransport.

Q. Is that an Alltransport file? A. It is.

Q. Is it kept in the regular course of business of Alltransport? A. Yes, sir.

Q. Did you make that file out in the regular course of business of Alltransport? A. I did.

Q. Does your writing appear on that file in any place? A. It does.

Q. Does the writing of anybody else appear on the jacket of that file? A. No.

Mr. Jaffe: The Government offers the jacket of the file in evidence.

(64)

Mr. Feinberg: No objection.

(Government's Exhibit 8 for identification received in evidence.)

Q. Did you have any conversation with Mr. Broker about a shipment that was to arrive in this country approximately October of 1954? A. Yes. I had a conversation with Mr. Broker at his place at 97 Nassau Street.

Q. Don't use the file, Mr. Wegner, please. First testify as to what you can remember and then we will see if we need the file. A. The conversation was——

Mr. Feinberg: Again we have no time.

The Court: He is going to give you that right

A. The time of the conversation was towards the end of September 1954, at which time Mr. Broker said that there is a new shipment coming, gave me the marks again, also the name of the ship.

Q. Do you remember what the marks were in the course of this conversation? A. AZ. On this shipment he asked me to advise P. M. Transfer again of the expected arrival date so that the P. M. Transfer, either John or Pat, could (65) make the necessary arrangements to pick up the clocks from Mr. Broker, which were supposed to be substituted for the merchandise to be exchanged. I told Mr. Broker that I would let him know as soon as I had the papers. Mr. Broker at the time said that this shipment when it comes should have instructions that it should go to Chicago, and I said to Mr. Broker as soon as I had the papers I would let him know. After we received the papers, Alltransport received the papers, I went to the place of Mr. Broker at 97 Nassau Street, I told him that we had the papers, and Mr. Broker said, "Go ahead. Make the necessary in-bond formalities, and then give the order to P. M. and tell them again to make sure to pick up the clocks," and I did precisely that.

Q. What did you do as a result of that conversation? A. As a result of the conversation, after the arrival of the ship, the instructions were given to P. M. Transfer to handle the shipment as he has done other shipments for Mr. Broker.

Q. Did you have any further conversations with either Mr. Broker or the Maisiellos on the shipment? A. Yes.

(66)

Q. Will you tell us when the conversation took place. A. The conversation took place about two or three days

after I had given the instructions to P. M. Transfer, which you would have to see from the file, if I am permitted to look at the delivery instructions.

Mr. Jaffe: At this time the Government will offer the delivery instructions.

(Marked Government's Exhibit 8-A for identification.)

Q. Will you look at this document, Government's Exhibit 8-A for identification. Is this document made out in the regular course of business of Alltransport? A. Yes, it is.

Q. Was it kept in the regular course of business of Alltransport? A. Yes, sir.

Q. And is the original of this document given to the trucking concern? A. It is.

Mr. Jaffe: We offer it in evidence.

Mr. Feinberg: I object to this as not binding upon the defendant. Nowhere does it appear that the (67) defendant was either the consignee or the shipper or in anywise the receiver of the alleged merchandise.

The Court: How do you know that this refers to the company of the defendant or to the defendant himself? Is there anything on the document which would so indicate?

The Witness: There is nothing on this document, except the conversations which I have had with Mr. Broker at 97 Nassau Street in connection with this particular shipment.

The Court: And you identify this particular document as the document relating to the shipment you have just outlined?

The Witness: Yes, I do.

The Court: It is admitted.

Q. Can you tell me the date now or the approximate date that you had the conversation with the Maisiellos? A. The approximate date was between the 21st of October and the 25th of October, 1954.

(Government's Exhibit 8-A for identification received in evidence.)

(Mr. Jaffe read Government's Exhibit 8-A to the Jury.)

(68)

Q. Will you tell the Court and jury with whom this conversation took place and where. A. The conversation took place with John Maisiello at P. M. Transfer, 74 Carmine Street, and also on the telephone. During the conversation John pointed out to me that I should communicate with Mr. Broker and tell Mr. Broker that under no circumstances, would John Maisiello or Pat want to handle the exchange of these two cases, merely for the reason that these two cases are the very identical cases that were returned to Germany after having been detected on the pier; that the old marks are clearly visible on the cases, and that he would not risk to do anything with these two cases.

I telephoned Mr. Broker at home to his home, and I relayed the message I received from John. Mr. Broker said, "I don't know; what do you want me to do?" I have

told the people abroad to make sure that new cases are used, but if they don't follow my instructions, I can't help it, but please see what you can do. Maybe we can get John."

I said I would try to have John meet him with me at this place the next morning. I made arrangements. I called John Maisiello and I said to (69) him what I had spoken with Mr. Broker, and then John said, "All right, let us meet the next morning at the place of Broker's Hosiery Shop at 97 Nassau Street."

We met the following morning at about 8.15 in the morning. John Maisiello told Mr. Broker what he had told me and what I had relayed on to Mr. Broker, and he said he would not want to handle the shipment, it is too dangerous he had not listened to his instructions, he had just disregarded it completely. He said he would not handle it unless Mr. Broker would be willing to pay him $2,000.

Mr. Broker at that time got very excited and he said, "No, I don't make that much money; I don't make that much, but please see what you can do, John, and we will settle it."

Then John says, all right, he will take care of it.

Then we left the premises of Broker's Hosiery Shop at 97 Nassau Street and the exchange of merchandise was then completed at the premises of P. M. Transfer, 74 Carmine Street.

Mr. Feinberg: Objection; and I move to strike it out unless this witness will testify that he was (70) personally present.

The Court: Mr. Wegner, were you present there when the switch was made?

The Witness: Not at this particular switch.

The Court: The jury will understand that the witness can testify only to what he actually sees or hears himself. In this particular case he says he was not present, and consequently you will disregard that testimony.

Q. Subsequent to this meeting between Broker, John Maisiello and yourself, did you have any further conversations with Mr. Broker regarding the AZ shipment? A. I did.

Q. Can you tell the Court and jury the approximate time of these conversations and where they took place? A. The conversations took place at the place of Mr. Broker at 97 Nassau Street after October 25th, well advancing in February and March of the following year, 1955. During the conversations I had asked Mr. Broker—

Mr. Feinberg: I still don't get the time limitation.

The Court: Is this a series of conversations?

(71)

The Witness: A series of conversations, yes, sir.

The Court: How many would there be?

The Witness: At least five or six.

The Court: What you are going to do is give us the effect of all the conversations?

The Witness: That is correct, your Honor.

The Court: Let us proceed.

They took place between October and February 1954 and 1955?

The Witness: And March, yes.

A. During the conversation I had with Mr. Broker, I asked him to the effect what is his intention with the shipment that is now in Chicago.

Mr. Feinberg: Which of the conversations is the particular substance of this conversation related to?

The Court: Was this mentioned in all of the conversations?

The Witness: That's correct.

The Court: The witness said he had five conversations and all related to the same matter.

Let us proceed.

A. (continuing) During the conversation, I asked Mr. Broker, "What is your intention now with the (72) shipment in Chicago? There you have a shipment and you said that you may go to Chicago. You may have somebody clear it. You may give further instructions. We are getting letters from our correspondents in Chicago to the effect that the shipment has not been taken up. I am holding a file with papers and you just disregard it."

Mr. Broker, during the many conversations said, "Well, take it easy. I will see that you will get further instructions and the shipment will be taken up, or we will give instructions to ship it somewhere. We will do something about the shipment; don't worry."

Then we received instructions from Hans Schmid to forward this shipment that was at that time in Chicago under Customs custody——

Mr. Feinberg: I will object to this. This is conversation that is obviously hearsay.

The Court: These instructions from Hans Schmid, were they in writing?

The Witness: Yes.

The Court: Are they part of your records?

The Witness: They are part of the records.

Mr. Jaffe: They are in the file. I am not offering them at this time in view of your Honor's (73) earlier instruction to list all the documents and have defense counsel look at them, but I intend to offer all the correspondence relating to these conversations, and I am more than willing to offer them now if defense counsel has no objection.

The Court: Let us proceed.

Then what happened?

The Witness: The next thing that happened is that we had instructions in writing from Hans Schmid to forward these cases on in bond from Chicago to State Tile Company in Toronto. When we received the instructions I went to Mr. Broker, and he said, "Yes, that is what I have arranged now. The shipments should go to Toronto and all the shipments will be taken care of. The cases will be accepted there by State Tile. All the charges will be paid. You don't have to worry about it any more."

Further, the instructions that were contained in the letter of Hans Schmid and written instructions were given to the correspondent in Chicago to forward the shipments in bond under Customs custody to Toronto. After the shipment got to Toronto, further difficulties developed due to the fact that——

(74)

Mr. Feinberg: Objection, if the Court please, as hearsay.

Henry Wegner—for Government—By the Court

The Court: What do you know personally about these difficulties?

The Witness: I do know all about the difficulties personally.

The Court: How?

The Witness: I know them because letters were received by the correspondents in Toronto wherein they say that the shipment cannot be cleared without a Canadian invoice, which is a Canadian Customs invoice.

Also, after the question of the Canadian Customs invoice was finally settled by the correspondent in Toronto filling out a sample form, mailing the sample form to the office of Alltransport, with the request that the Canadian sample form is completed——

Mr. Feinberg: I object. If this is written evidence, then this is something he cannot personally testify to.

The Court: Are these documents that are in your file?

The Witness: Yes.

The Court: All those documents are in court here?

(75)

Mr. Jaffe: Yes, your Honor.

The Court: Do you intend to offer them?

Mr. Jaffe: I intend to offer all the files of Alltransport.

The Court: Your objection is that you want the documents?

Mr. Feinberg: Yes, sir, I would like the docu-

ments since they would speak for themselves, and I don't want this witness's coloration or his summation of what the documents contain.

The Court: What is the next thing you did?

The Witness: The next thing that happened is that after the documents were received, I went to the office of Mr. Broker and I said to Mr. Broker, "Here are the papers we have received from Canada. These papers will be sent to Germany, they should be signed, here is the name of our correspondent in Toronto. They cannot clear the shipment unless the shipper abroad completes the form, signs it and mails it to our correspondent in Toronto."

Mr. Broker said, "Give it to me, I will take care of it and see that it is mailed."

The next thing that happened is that correspondence received from Kuhne & Nagel, wherein (76) Kuhne & Nagel in Toronto said——

The Court: What is the next thing that happened as far as you and Mr. Broker are concerned?

The Witness: The next thing is that I advised Mr. Broker at his office at 97 Nassau Street that Alltransport has received a letter from Kuhne & Nagel where Kuhne & Nagel says that finally, after all these difficulties and after they have now received the Canadian invoices, the State Tile Company refuses to accept the shipments due to the very high charges involved.

I advised Mr. Broker of it and Mr. Broker said he would see to it that the State Tile will take up the shipment, and he made a telephone call to Toronto.

When we received another letter from Kuhne & Nagel, I again went to Mr. Broker and I told him "Well, you said it would be taken up and now again the correspondence in Toronto advises that the shipment is not taken up again."

Mr. Broker made another telephone call.

Q. Was this telephone call made in your presence? A. That is right, and then after the telephone call he said to me, "Now, please do me a favor. State Tile will take up the shipment. Here are $300 (77) in cash. Will you please mail the money to State Tile and State Tile will then take up the shipment?"

Mr. Broker gave me an envelope with the name of the man from State Tile, which was Ajzenstadt, and his address.

I went to National City Bank, at 26 Broadway branch, bought two personal money orders, took the personal money orders, put them in a registered envelope, sent it registered to Ajzenstadt, and sent the copy of that receipt from the National City Bank, put it in an envelope and mailed it to Mr. Broker.

(Marked Government's Exhibit 9 for identification.)

Q. I show you Government's Exhibit 9 for identification and ask you if you have ever seen those two checks before (handling). A. I have.

Q. When was the first time you saw those two checks? A. When I bought them.

Q. And where did you buy them? A. At National City Bank, 26 Broadway.

Q. Does your writing appear anywhere on those two checks? A. It does. I filled them out.

(78)

Q. Did you write the name M. Broker on there? A. I did.

Q. Did you write 15 Amboy Street on there? A. I did.

Mr. Jaffe: The Government offers them in evidence.

Mr. Feinberg: Objection is offered to these. There is no testimony this was mailed out, or that Mr. Broker's name was used in the course of any conspiracy or anything else, and certainly this would not be deemed in pursuance thereof.

Q. Did you mail these checks to Mr. Ajzenstadt in Canada? A. I did.

Q. Did you mail those checks on the instruction of Mr. Broker?

Mr. Feinberg: Objection as leading the witness.

The Court: The witness has already testified to that. I will overrule the objection and admit them in evidence.

(Government's Exhibit 9 for identification received in evidence.)

(Mr. Jaffe read Government's Exhibit 9 to the jury.)

Q. After you mailed those checks to Mr. Ajzenstadt, did you receive any correspondence at the office of (79) Allegrisport in relation to the A Z shipment? A. Yes.

Henry Wegner—for Government—Direct

Q. From whom did you receive this correspondence? A. The correspondence was received from Canada. I do not exactly remember it without the file, if it was from J. W. Mills. It was a letter stating——

Q. After you received that letter, did you have a conversation with Mr. Broker?" A. Yes.

Q. Will you tell the Court and jury about the conversation? A. The essence of the conversation was that apparently this shipment was still not taken up——

Mr. Feinberg: If the Court please, could we have the alleged conversation instead of his summation of the conversation?

The Court: Give us your best recollection, what you said to him and what he said to you.

The Witness: I said to Mr. Broker, "We have sent the money now to Ajzenstadt and the letter that we received from Toronto states that the shipment is still not taken up."

Mr. Broker said he couldn't understand that, it was promised to him by Ajzenstadt to take the (80) shipment, and he made another telephone call.

A few days later, during the telephone call with Kuhne & Nagel in Canada on other matters, Kuhne & Nagel said that they had heard from Ajzenstadt, that the shipment is being cleared, that he was paid for the charges and delivery should be made shortly.

I told Mr. Broker what I had heard from the office in Toronto.

Q. Did you receive any payment from Mr. Broker for the AZ shipment? A. I did.

Henry Wegner—for Government—Direct

Q. What did you receive from Mr. Broker? A. I received from Mr. Broker $200.

Q. How many cases were involved in the AZ shipment? A. Two.

Q. Did you receive any payment from the Maisiellos on that shipment? A. I did.

Q. How much did you receive from the Maisiellos? A. $200.

(Government's Exhibit 10 marked for identification.)

The Court: We will take a short recess now.

(sf)

(Short recess.)

Q. I show you Government's Exhibit 10 for identification and ask you if that is a file of Alltransport? A. Yes it is.

Q. Is that made out in the course of business of Alltransport? A. Yes, sir.

Q. Is it kept in the regular course of business of Alltransport? A. It is.

Q. Does any handwriting appear on that file? A. Yes.

Q. Whose handwriting is that? A. Mine.

Mr. Feinberg: Same objection is made with reference to the file, not binding on the defendant.

The Court: Same ruling.

(Government's Exhibit 10 for identification received in evidence.)

Q. Did you have a conversation with Moritz Broker regarding shipment marked ZD 142? A. I did.

Q. Can you tell us the date of the first conversation you had with Moritz Broker on this shipment? (82) A. The approximate date of this conversation at his place 97 Nassau Street was towards the beginning of December 1954, at which time Mr. Broker told me that there is another shipment coming. Again he gave me the marks and the numbers. Again he gave me the name of the ship and he said as soon as we had papers I should let him know, do the same thing, this time it should go to Philadelphia, and on this shipment, after it came here, after it was shipped to Philadelphia, he said he would go to Philadelphia and clear the shipment himself.

When we received the papers from abroad, I went to the premises of Mr. Broker at 97 Nassau Street. I told him that we had received the papers and Mr. Broker said, "Yes, go ahead, tell PM to pick up the clocks again for the substitution and give him the order."

After the ship came in, the entry was made and the pick-up order was given to PM Transfer.

Q. Did Alltransport receive a letter from Schulze before you spoke to Mr. Broker on this occasion? A. Yes.

Q. As a result of receiving that letter, did you have a conversation with Mr. Broker? (83) A. Yes.

Q. Will you tell us the conversation you had with Mr. Broker and the approximate time and date of that conversation? A. The time was right after——

Mr. Feinberg: Objection to this question and the answer about to be offered as not predicated on anything in evidence.

The Court: Objection overruled. Let us proceed.

The Witness: After the receipt of the letter, I went to Mr. Broker at 97 Nassau Street and I told him about the contents of the letter, where Schulze said that——

Mr. Feinberg: Objection.

Mr. Jaffe: It is a conversation between Mr. Broker and this witness.

Mr. Feinberg: I would like to have the time.

The Witness: The time was in the morning, after the receipt of the letter, the very following day.

The Court: What is the date, the first part of December 1954?

The Witness: This is December 20, 1954.

Q. The letter that was received by Alltransport (84) from Schulze, was that received in the regular course of business? A. It was.

Q. Was it kept in the file in the regular course of business? A. Yes, sir.

Q. Was it relating to a business transaction that Alltransport was engaged in? A. That is right.

Mr. Jaffe: The Government offers that letter in evidence. It is also in German, which Mr. Wegner will translate as soon as it is received.

Mr. Feinberg: Objection is made to this, if your Honor pleases, in view of the fact that although it is in German, and I can't read the contents of the letter, just pick up a word here and there, apparently from the testimony of this witness it was not made in the course of Alltransport's business, but was made in the course of business conducted privately by the witness here.

Mr. Jaffe: I object to the characterization of the testimony.

The Court: Objection overruled. Let us proceed.

(Marked Government's Exhibit 10-A.)

(85)

Q. Will you translate this letter, please (handing)? A. The letter is addressed to Alltransport, Inc., dated in Bremen December 13, 1954, referring to a case of clocks ZD 142, from Bremen to the address of Alltransport, and it reads:

"With the S. S. Hoechst of the Holland America Line, we shipped to your address on December 8th the above-mentioned shipment. The S. S. Hoechst will approximately arrive in New York on the 19th of December and we ask you, please, to see after the unloading of the case to mark the case with In Bond. Expenses that may be in connection with this marking should be billed to us."

By "us" they mean Schulze.

"A copy of the bill of lading we attach herewith. We ask you for prompt attention to this letter."

It is signed "Schulze."

Q. Did you have a conversation with Mr. Broker after Alltransport received that letter? A. Yes, I did.

Q. Will you tell us approximately when you had that conversation? A. The following day in the morning.

Q. Can you tell us where that conversation was? (86) A. At 97 Nassau Street.

Q. Now, will you tell us the contents of the conversation? A. I went to Mr. Broker and I told him about the

letter that we had received. Mr. Broker said, "Well, is it necessary that you mark that, not that you have to go to the pier and mark the case? Will it in any way interfere with the movement by PM?"

I said, "Well, it is not actually necessary that you mark the case."

And Mr. Broker said, "Well, you better don't; just leave it the way it is," and it was left that way.

Q. Did you have a conversation with Mr. Broker about this shipment subsequent to this conversation? A. Yes.

Q. Where did that take place? A. This conversation took place at 97 Nassau Street.

Q. The approximate time? A. The approximate time? Many conversations. The very same conversations as on the previous AZ shipment; after December, well into March, 1955.

Q. Will you tell us about these conversations? A. The conversations were that I told Mr. Broker that we had received notification again from Kuhne & (87) Nagel also on this case that there was no invoice—no, I beg your pardon; I am sorry, sir. The conversations that I had with Mr. Broker on that was that I asked him after December what his intention will be with this shipment because he had mentioned before that he would go to Philadelphia and clear the shipment himself.

After I heard from the correspondent in Philadelphia that the shipment had actually gotten there, I went to Mr. Broker again and I told him ——

Q. Did you receive a letter from Philadelphia? A. I did.

Q. After you received that letter, what did you do? A. I went to Mr. Broker at 97 Nassau Street and I said

to him what his intentions are and he said that I should wait, he will probably go to Philadelphia and clear the shipment himself.

Later on he said in a subsequent conversation at his place at 97 Nassau Street that he had changed his mind, that he wouldn't want to go to Philadelphia and that we would get instructions again that that shipment should go somewhere else, and we will get the necessary instructions, and we did get a letter from Hans Schmid wherein Hans Schmid gave us (88) instructions to forward the shipment to State Tile Company in Toronto.

The Court: Did you see Mr. Broker about that letter?

The Witness: Yes, I did.

The Court: Tell us the conversation with Mr. Broker about that letter.

The Witness: I told Mr. Broker I received that letter to send it on to State Tile, and Mr. Broker said to go ahead, ship it on to State Tile, and he will take up the shipment after it gets there.

Q. Before these instructions came by mail, did you have a conversation with Mr. Broker about the shipment being sent to State Tile? A. I had a conversation with Mr. Broker asking him what he wanted to do with the shipment.

Q. Will you tell us about that conversation, please? A. I said in the conversation, "Mr. Broker, what would you want to do with the shipment? You said you may want to go to Philadelphia," and he said, "No, I will give instructions that the shipment should be forwarded and

probably the same as on the other shipment, it will go to State Tile."

(89)

Q. Then you received instructions from Maisiello? A. Yes.

Q. And that was put in the file of Alltransport? A. Yes.

Q. Did you write a letter to Philadelphia? A. I did.

Q. Was a copy of that letter put in the file of Alltransport? A. Yes, sir.

Q. Did you send another letter to Schmid after you had sent the letter to Philadelphia? A. I believe I did advise Schmid of——

Q. No, don't say what is in the letter. I just want to know if you sent a letter to Schmid. A. I did.

Q. Did you receive payment for your part in this transaction? A. I did.

Q. What did you receive from Mr. Broker? A. I received $100 from Mr. Broker.

Q. Did you receive any payment from Maisiello? A. I did.

Q. What did you receive from Maisiello? (90) A. $100.

Q. I show you Government's Exhibit 10-B for identification and ask you if you have ever seen that document before. Yes, I have.

Q. Where have you seen that document before? A. At the office of Alltransport.

Q. Is that a document made in the regular course of business of Alltransport? A. Yes, it is.

Q. Is that document kept in the regular course of business of Alltransport? A. Yes, sir.

Q. Is that document concerning the shipment that you just testified about, Mr. Wegner? A. Yes, it is.

Mr. Feinberg: Same objection offered, as not binding on the defendant.

The Court: Same ruling.

Mr. Jaffe: (To the jury) This is a document dated December 23, 1954. It is on the stationery of Alltransport and it is marked "Delivery Instructions" (reading).

Q. I show you a document which will be marked (91) Government's Exhibit 11 for identification and ask you if you have ever seen that file jacket before? A. I have.

Q. Where have you seen that file jacket before? A. The office of Alltransport.

Q. Is that a file jacket made in the regular course of business Alltransport? A. It is.

Q. Is that file jacket kept in the regular course of business of Alltransport? A. Yes, it is.

Q. Is there handwriting upon that file jacket? A. Yes, there is.

Q. Can you tell us whose handwriting that is? A. Mine.

Q. Is that the only handwriting appearing on that jacket? A. Except for the pencil writing which is done by the customs section to call the pier—the inward freight, to find out when the boat comes in.

Q. This in blue ink here, is that in your handwriting? A. Yes.

Mr. Jaffe: The Government offers this for (92) identification.)

(Marked Government's Exhibit 11 for identification.)

Mr. Feinberg: Before it is offered, may I see it?

(Document handed to Mr. Feinberg.)

Mr. Feinberg: Objection is offered to this file jacket. Nowhere does the defendant or Embrohs Trading Company's name appear on the jacket. It sets forth Hans Schmid in Munich as the shipper and State Tile in Toronto, Canada——

The Court: Suppose we have him describe this particular shipment before we make a ruling on this particular file.

Mr. Jaffe: Yes.

Mr. Feinberg: Would you remove that, Mr. Jaffe, since it is not in evidence?

Mr. Jaffe: It is only in for identification.

Mr. Feinberg: He has already identified it.

Mr. Jaffe: No.

Mr. Feinberg: If I recall, you asked him whether the writing on that is his, and so on.

The Court: Does that cover the shipment the same as you were describing?

(93)

The Witness: Yes, the same kind of shipment.

The Court: We will receive it in evidence.

Just move the shipments along.

Mr. Jaffe: This is a very important shipment in the Government's case.

The Court: Let us proceed.

Q. Did you have a conversation with Mr. Broker regarding MS-48 and -49? A. I did.

Q. Will you tell us approximately when your first conversation regarding MS-48 or -49 took place. A. The conversation took place in the early part of February 1955.

Q. And where did this conversation take place? A. At the place of Mr. Broker at 97 Nassau Street.

Q. Did it take place in the morning or in the afternoon? A. That I can't tell you exactly.

Q. Will you tell us the conversation that took place with regard to MS-48 and -49? A. The conversation that took place was the same as all others, telling me that he had received notification from abroad about a new shipment; gave me the marks and numbers, the name of the ship, and he (94) said as soon as he received papers to tell P. M. about it, and said he should pick up the clocks for the substitution and follow the shipment; and Mr. Broker said that this shipment will be consigned directly to State Tile so we will have no difficulties as we have had on the previous shipments where State Tile only came into the picture later after the shipment was redirected.

After we had received—Alltransport I mean—the papers from Hans Schmid, I went to Mr. Broker at 97 Nassau Street and told him I had received the papers; and Mr. Broker says, "Go ahead, make the same entry. Tell P. M. to make sure to pick up the clocks."

The entry was made; the orders were given to P. M. Transfer after the arrival of the shipment.

Q. Did you have a conversation with Maisiello after the conversation with Mr. Broker? A. The conversation that I had with Pat Maisiello was again his complaint about the straps being too tight and the nails not being in order the way he wanted it. Also the wood was not proper.

Q. Did you have a conversation with him about picking up clocks? A. Yes. I told P. M., told Pat and John, to go (95) to the place of Mr. Broker as he always does and pick up the clocks.

Q. Did Alltransport give delivery instructions of this shipment to P. M. Transfer? A. Yes, sir.

Mr. Jaffe: This document will be marked 11-A for identification.

(Marked Government's Exhibit 11-A for identification.)

Q. Have you ever seen this document before? A. I have.

Q. When was the first time you saw that document? A. At Alltransport.

Q. Is that document made in the regular course of business of Alltransport? A. Yes.

Q. Is it kept in the regular course of business of Alltransport? A. Yes, it is.

Mr. Jaffe: The Government offers Exhibit 11-A for identification in evidence.

Mr. Feinberg: Objection is made to this, your Honor, on the ground that it is not binding on the defendant, and there seems to be no correlation between (96) this and the testimony offered previously. It seems like another shipment from the face of this document.

The Court: Are you identifying this document as the one you just referred to in your testimony with reference to the third shipment?

The Witness: Yes, your Honor.

The Court: It is overruled. It will be admitted.

(Government's Exhibit 11-A for identification received in evidence.)

(Mr. Jaffe reads Government's Exhibit 11-A to the Jury.)

Q. Did you receive any money from Moritz Broker for this shipment? A. I did.

Q. How much did you receive? A. $200.

Q. Did you receive any money from the Maisiellos for this shipment? A. I did.

Q. How much did you receive? A. $200.

Q. Did you receive a copy of a letter—did Alltransport receive a copy of a letter from Maislin (97) Brothers on the shipment? A. Yes, they did.

Q. After Alltransport received a letter from Maislin Brothers did you have a conversation with Moritz Broker? A. Yes, I did.

Q. Will you tell us that conversation. A. I went to the premises of Mr. Broker at 97 Nassau Street right after we received the letter.

I would have to see the letter, your Honor.

The Court: All right.

Mr. Jaffe: The letter is in the file.

A. (continuing) I told Mr. Broker that we had received a copy of that letter which states that shipment was not taken by the corsignee.

Mr. Broker said that he will see that that will be rectified, "But why are you concerned?" he said to me. "This is consigned directly to State Tile, and don't worry about it. It will be taken care of; you shouldn't worry about this shipment."

Q. After this conversation with Mr. Broker, did you subsequently receive other correspondence relating to this shipment? A. Yes, from Kuhne & Nagel.

(98)

Q. Did you have any conversations with John and Pat Maisiello about the difficulties encountered with unclaimed shipments? A. Yes, I did.

Q. Will you try and tell us when these conversations took place and where they took place. A. The conversations took place shortly after the receipt of that letter. It took place at the premises of P. M. Transfer Company at 74 Carmine Street, at which time I had a discussion with John and Pat and told them about the difficulties that we encountered, or that I encountered, in receiving papers from abroad relating to the shipments from Mr. Brukirer, where instructions were given, and he had just shown his total disregard as to what happens to the shipments, to the cases, once they get to Canada; just assumes the attitude of "don't care, don't worry about it; somehow it will take care of itself," and of course mentioning the fact too to Pat and John Maisiello of the danger we are actually exposing ourselves to due to the fact that these cases are just laying around and not actually taken up, as Mr. Broker said they would.

P. M. was very much concerned about it, and (99) he said also at the time that something would have to be done about it or he couldn't handle anything for Mr. Broker any more.

Q. Did you have any conversations at about this time with Mr. Broker concerning the Foreign Trade Zone shipments? A. Yes, I did.

Q. Will you try and place the time and the place of this conversation. A. The time was shortly after the conversations with P. M. Transfer. The place was again 97 Nassau Street.

When I mentioned to Mr. Broker the fact that not only the tickets on that one shipment from Chicago and the one shipment from Philadelphia, and where State Tile just did not take the shipments, and it took quite an effort to make sure that he finally takes the shipment, and also

the fact of his just disregarding and don't care what happens to these two cases that were consigned to State Tile, that I had discussed the matter with Pat and with John, and that we all had expressed our concern about the fact that these cases are actually not taken; and I said to him that we just don't want to do anything any more unless his (100) name somehow would appear on the papers.

I said to Mr. Broker, "You have to understand me, if anything comes up in this matters in the form of correspondence from Canada or from somewhere else, I have to first of all account for the shipment with our bookkeeping department, and our invoices are open, and open and open for months, and just nothing is done," and I said, "and if any difficulties should arise on any of the shipments that you contemplate in the future, I want to be sure to be able to go to you, that your name appears, and come to you for any payments or anything. If any question should come up, I should like to make sure that you appear."

Mr. Broker at the time said that he would see that everything would be all right, and asked me how it would be with Foreign Trade Zone, putting the things in the Foreign Trade Zone, if it could be done, and I said, "Yes, it could."

He said, "You will get instructions it should go to the Foreign Trade Zone."

I said to him, "In what form will we get instructions?"

Mr. Broker said, "My name will appear, and then I will just give you instructions to make an entry (101) for the Foreign Trade Zone, and then you wouldn't have no difficulties any more and no more Canada. It will be all clear."

I passed the information on to Pat and John Maisiello.

Mr. Jaffe: Will you mark this for identification.

(Marked Government's Exhibit 12 for identification.)

Q. This file jacket, Mr. Wegner, have you ever seen that file jacket before? A. Yes, I have.

Q. Is that a file jacket of Alltransport? A. Yes, sir.

Q. Is it kept in the regular business of Alltransport? A. Correct.

Q. Is it made in the regular course of business of Alltransport? A. Yes.

Q. The writing on this document—can you identify it? A. Yes, it is my handwriting.

Q. Does any other writing appear on that document? A. The writing of the delivery clerk at the time, (102) of the delivery man in our office, having the phone number of the office, the Embrohs Trading.

Q. Does this jacket relate to a subsequent conversation you had with— A. Correct.

Mr. Jaffe: Withdrawn. I withdraw that, your Honor.

Q. Did you have a conversation with Moritz Broker concerning the shipment known as Susis 689/694? A. Yes, I did.

Q. Will you tell us the approximate date of that conversation and where it took place. A. The date of the conversation was before March 9th——

Mr. Feinberg: Excuse me. Is it necessary to leave a file not in evidence before this witness who is consistently glancing at the file?

The Court: He is permitted to refresh his recollection from the file.

Mr. Feinberg: But, sir, the impression gotten from this end, anyway, is that——

Mr. Jaffe: The impression of defense counsel, your Honor.

Mr. Feinberg: That is correct—is that——

(103)

The Court: Let us proceed.

Did you get the date off the file?

The Witness: Yes.

The Court: Do you want him to have the file to refresh his recollection?

Mr. Jaffe: So that we do not have the problem that we had before that we talked about this shipment, and then have to reintroduce the exhibit in evidence, I just want to make sure that the conversation with the defendant broker was discussed first, and then I can offer the file.

The Court: Let us proceed.

Give us the date of it.

The Witness: The date is March 9th, your Honor.

The Court: 1955?

The Witness: 1955.

By Mr. Jaffe:

Q. Did you have a conversation? A. Yes, with Mr. Broker at 97 Nassau Street.

Q. Will you tell us about the conversation. The conversation was to the effect that Mr. Broker said that he had a shipment of tripods coming from abroad and that

this was a shipment he didn't (104) want to handle as far as the exchange of merchandise was concerned; that just when the shipment comes in, to make a Foreign Trade Zone entry, and just handle it like any other importation.

Q. When we received the papers I told Mr. Broker about it, and he gave me the commercial invoice from S. Brukirer.

Q. Was this handled differently from the other shipments? A. I beg your pardon?

Q. Was this handled differently from the other shipments? A. Yes, in so far as no exchange of merchandise was made.

Q. Did you receive any payment from Mr. Broker? A. I did not receive any payment.

Q. Did you receive any payment from the Maisiellos for this shipment? A. I did not.

Mr. Jaffe: I would like to offer that jacket in evidence, your Honor.

The Court: Do you offer the jacket?

Mr. Jaffe: Just the jacket.

Mr. Feinberg: Subject to the testimony about (105) the writing contained on the face, there will be no objection.

Mr. Jaffe: I believe he has already testified that it is his writing on the face of it, your Honor.

The Court: The witness testified that was all his writing except for that of the clerk at the office as to the telephone number. It is received.

(Government's Exhibit 12 for identification received in evidence.)

Mr. Jaffe: Will you mark this for identification.

(Marked Government's Exhibit 13 for identification.)

Q. Did there come a time, Mr. Wegner, when you had a conversation with Mr. Broker regarding shipment known as No. 33? A. Yes, there was.

Q. Will you tell us actually when that discussion took place. A. The discussion took place as always in the past about a week or two before we received the papers.

Q. Well, can you tell us the approximate date? A. It would be in the summer of 1955.

Q. And where did that conversation take place? (106) A. 97 Nassau Street, at the place of Mr. Broker.

Q. Will you tell us about that conversation. A. In that conversation Mr. Broker said that there will be a shipment; that this shipment should go into the Foreign Trade Zone, and either we would get the papers or he would get the papers, and then should tell P. M. again to make sure to go to his place and pick up the clocks for the substitution.

Q. Did you do anything about shipment No. 33 after the conversation with Mr. Broker? A. I advised P. M. Transfer preliminary about the name of the boat, the approximate arrival date.

Q. About how soon after the conversation with Mr. Broker did you advise P. M.? A. A few days.

Q. Did you do anything after the conversation with P. M.? A. The next thing that happened was that I was called by Mr. Broker to come to his place. I went to his place——

Q. Approximately can you tell us when this happened? A. It is very difficult without the shipping documents.

The Court: How long after?

(107)

The Witness: A few days.

The Court: A few days. Let us proceed.

The Witness: A few days later.

Mr. Broker said that he had received the bill of lading, and he gave me the bill of lading, and he said we should make an entry on that, Foreign Trade Zone entry, and give the order to P. M., and tell P. M. to pick up the clocks.

Q. Was there anything unusual about the fact that Mr. Broker called you at home?

Mr. Feinberg: Objection, if the Court please. It calls for a conclusion.

The Court: I sustain the objection.

Q. Let me see if I can refresh your memory, Mr. Wegner. Were you on vacation, or do you remember being on vacation around the time the shipment arrived? A. Yes, that's correct.

Mr. Feinberg: Objection. Leading the witness.

The Court: Overruled. It is preliminary.

Let us proceed.

Q. Will you tell us now what you remember about that conversation. A. I was called by Mr. Broker at home, and he said that he had called the office and he heard (108) that I was on vacation, and that he had given instructions to Mr. Jannace in our office to handle the shipment and give the order to P. M. Transfer; and that Mr. Broker said when would I be back from my vacation.

I said two weeks.

Mr. Broker at the time said, "You have got to make sure when the boat is in, you must go to the office; you must see that the papers are given correctly; that P. M. gets the papers."

So I said to him, "I will see to it; I will take care of it."

I found out from the office when the shipment would arrive and I was in the office on that day.

Q. I show you Government's Exhibit 13 for identification and ask if you can identify that shipment. A. Yes, I can.

Q. Those papers, rather. A. Yes.

Q. Is it from the file of Alltransport? A. Yes.

Q. Is the jacket kept in the regular course of business of Alltransport? A. Yes.

(109)

Q. Is it made in the regular course of business of Alltransport? A. Yes.

Q. Can you identify this writing? A. Yes, I can.

Q. Whose writing is that? A. It is the handwriting of Mr. Jannace.

Mr. Feinberg: No objection.

(Government's Exhibit 13 for identification received in evidence.)

Q. After your conversation with Mr. Broker did you have conversations with anybody else regarding the shipment? A. With P. M. Transfer.

Q. And approximately when did the conversations with P. M. Transfer take place? A. About the middle of July.

Q. Where? A. At his place, 74 Carmine Street.

Q. P. M. Transfer's offices? A. That's right.

Q. Who was present at that conversation? A. At that conversation, Pat and John were present.

(110)

Q. Will you tell us what was said at that time. A. In this conversation Pat said, "It is just impossible to do it," because the case was not large enough to accommodate the amount of clocks that Mr. Broker had intended to be put into the case, and the weight difference was absolutely ridiculous, some 30 or 40 pounds difference, and it goes into the Zone, and if they weigh it he doesn't know what kind of an explanation he can possibly give.

I passed on this information to Mr. Broker at 97 Nassau Street, and Mr. Broker said at that time that it impossible, it could be one pound, two pounds, three pounds, but never that much, because that is all arranged abroad that the weight would always be the same, they put in so many clocks, and whatever comes out of the case at the time of the substitution, the merchandise inside the case that is being removed would have the equal weight of the clocks to be put in.

Q. Did you receive any payment from Mr. Broker on this shipment? A. I did.

Q. Do you remember how much you received on this shipment? A. $75 or $100.

(111)

Q. Did you receive any money from the Maisiellos on this shipment? A. I did.

Q. Did there come a time in July of that year when there was a meeting between Mr. Broker, yourself, and the Maisiellos? A. Yes.

Q. Tell us where this meeting took place. A. The meeting was requested by Pat Maisiello and was arranged with Mr. Broker when I picked up him up from his place after hours, after 5.30, from 97 Nassau Street, and I went down to P. M. Transfer at 74 Carmine Street.

Then I went into the restaurant with Mr. Broker, and I left Mr. Broker there——

Q. What is the name and where is this restaurant. A. The Schafu Restaurant; it is one or two houses next to P. M. Transfer on Carmine Street.

I went to the office of P. M. Transfer and I told John and Pat that I had Mr. Broker in the restaurant, and they said, "Well, go in and we will join you in a few moments."

And Pat and John joined us there later on.

At this time the conversation was about (112) the suggestion by Pat as to how the case should be made, how large the case should be, how the straps should be, how the nails should be, mentioning the fact of the terrific weight difference which Pat Maisiello was very much concerned about.

Mr. Broker said at the time, as he said to me before, "It is impossible, it couldn't be. It was all arranged that there could not be such a weight difference."

So Pat said, "I am in the trucking business too long; I just have to lift a case and I can judge how much it should weigh; certainly 30 or 40 pounds."

He said he has to make sure that this would not happen.

Mr. Broker said he would make sure; that he would see that everything is arranged in Germany, that it will never happen again.

At that time also the question came up of a missing camera which Mr. Broker said that he had a camera miss-

ing on one of the shipments, and he was very concerned about that; and Mr. Pat Maisiello said, "If I tell you I didn't take it, then I didn't take it, because if I would take this I could take the whole case. I didn't take it, and that should be enough."

(112a)

So Mr. Broker said, "Well, how about somebody else; possibly it is John or your son?"

Pat said, "Positively not. It was never taken out as far as we are concerned," and that was the end of that discussion.

(113).

Q. Now, did you have a conversation with Mr. Broker about a shipment known as SB-411/412? A. Yes, that is right.

Q. Approximately when did this conversation take place? A. That conversation took place about two weeks before we received the documents.

Q. Well, can you give us the approximate time? A. The date as close as I can come would be August or September of 1954.

The Court: 1954?

The Witness: 1955; I beg your pardon.

Q. Will you tell us where this conversation took place? A. At 97 Nassau Street, when Mr. Broker said that there will be a shipment again from abroad; give me marks and numbers; give me the name of the ship, saying either we would get the documents or he should get the documents, and we should make a foreign trade zone entry;

do the same thing all over again; tell P. M. Transfer to pick up the clocks for substitution and then give the order to P. M. Transfer.

I advised P. M. Transfer preliminarily, giving the name of the ship and the approximate arrival date.

Q. Did you have another conversation or meeting (114) with Mr. Broker about this shipment? A. Yes, I did.

Q. Will you tell us about it? A. Mr. Broker called me to his office at 97 Nassau Street one morning and said he had received the bill of lading on that shipment; and he gave me the bill of lading in his office, and he said, "Now, make the entry as I told you; make a foreign trade zone entry and give the order to P. M. Transfer and tell them to pick up the clocks."

After the shipment came in the order was given to P. M. Transfer and P. M. Transfer handled it.

Q. Did Alltransport make out a file on this shipment? A. We did.

Q. Was it made out in the regular course of business of Alltransport? A. Yes, sir.

Q. Was it kept in the regular course of business? A. Yes, sir.

Mr. Jaffe: Will you mark this for identification as Government's Exhibit 14?

(Marked Government's Exhibit 14 for identification.)

Mr. Jaffe: The Government offers Government (115) Exhibit 14 for identification.

Mr. Feinberg: No objection to this.

(Government's Exhibit 14 for identification received in evidence.)

By Mr. Jaffe:

Q. Did you receive any payment from Moritz Broker on this shipment? A. I did.

Q. Do you remember what you received? A. $200.

Q. Did you receive any payment from the Maisiellos on the shipment? A. I did.

Q. Do you remember what was received? A. $200.

Q. Did Alltransport Company make out a delivery instruction on this SB-411 and 412? A. Yes.

Q. Do you know to whom the delivery instruction was given? A. To P. M. Transport.

Q. I would like to call your attention now to shipment SB-33/34. Did you have a conversation with Mr. Broker in regard to that shipment? (116) A. Yes, sir, I did.

Q. Do you know when that conversation took place? A. The conversation took place about, again, two weeks before; approximately two weeks before the papers arrived. As close as I can come to it, around October, 1955.

Q. Where did that take place? A. It took place at 97 Nassau Street, with the same thing; Mr. Broker said, "You will receive papers," or "I will receive papers on the shipment, Mark so-and-so," and he had the name of the ship; two cases, make the same thing again; foreign trade zone entry; give the order to P. M. Transfer; make sure he picks up the clocks for the substitution and handle it the same way, the very same way as the others.

Q. Now, before you had this conversation with Mr. Broker did there come a time that you had a conversation between Mr. Broker, John Maisiello and yourself in regard to money? A. Yes, there was.

Q. Tell us where this conversation took place? A. One day John said that he wanted to meet Mr. Broker because——

Q. Can you tell us the time of this conversation, please?
(117) A. The time was in the morning at 8.15.

Q. The approximate time of the year. A. It was between August and September of 1955.

Q. Where did it take place? A. It took place at the Broker Hosiery Shop at 97 Nassau Street.

Q. Will you tell us what transpired on that occasion? A. John Maisiello said to Mr. Broker that Mr. Broker is aware of all the difficulties that the P. M. Transfer Company has had in the past; the cases not the right size; the weight differences; again the nails, and again the straps, and that it is too much of a risk for him; he does not want to have anything to do with it any more except that he would get more money.

He also said at the time that he could not pay me any more; that Mr. Broker would have to take care of me alone; that he does not get enough money from Mr. Broker to justify it for him at all to handle this type of things any more.

And Mr. Broker said to him that, "You know, I don't make so much money and it is difficult for me, and what are you trying to do to me?"

(118)

And then he said to me I should be good enough to leave the room for a few minutes so that he could talk to John Maisiello.

I left the back room of his store for about ten or fifteen minutes, and after that I was called back and John was outside and I was alone with Mr. Broker; and Mr. Broker said, "You know, John is always asking me for more money and you know I can't pay more but I made an

arrangement with him, and as far as he is concerned he would not pay you any more but I will still give you a hundred dollars, and at the end when I am finished with the whole thing, when I see how I can sell the merchandise and if I make a little more I can always give you a little more; but as far as John is concerned he can't pay you any more."

So I said to Mr. Broker, "That is all right; it is okay; there is nothing else I can do."

After this I left with John and John in the car said that I should have insisted on getting more money from Mr. Broker, but that he said that he would still continue to do something, to give me something. He could not give me a hundred dollars a case but he would give me something.

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(121)

New York, August 8, 1956
10.30 o'clock a.m.

(Trial resumed; jury present.)

HENRY WEGNER resumed.

Direct examination continued by Mr. Jaffe:

Q. I show you this document marked 14-A for identification and ask you if you can identify it. A. Yes, I can. It is a delivery order on Alltransport stationery.

Q. Is that document kept in the regular course of business of Alltransport? A. Yes, it is.

Q. Is it made in the regular course of business of Alltransport? A. It is.

Mr. Jaffe: I offer it in evidence.

Mr. Feinberg: Objection is offered to this, if your Honor pleases, on the ground that this is not only a self-serving document, but nowhere does the defendant or the defendant's company appear thereon; and further, the scope and purpose of any alleged (122) similar offenses which might be introduced here, has gone so far afield, is so cumulative, that it is bound to divert the jury from the issues contained in the indictment.

The Court: Let me see the document.

(Document handed to the Court.)

Q. Mr. Wegner, is this the last shipment you testified about Monday? A. It is, sir.

The Court: The objection is overruled. Let it be admitted in evidence.

(Government's Exhibit 14-A for identification received in evidence.)

Q. Mr. Wegner, I would like to direct your attention to a shipment called SB33-34. Did you have any conversation with Mr. Broker about this shipment? A. Yes, I did.

Mr. Feinberg: Was that the shipment concerning which you just introduced a paper?

Mr. Jaffe: No, sir.

Q. Will you place the time of the conversation. A. The time of the conversation was during September 1955.

(123).

Q. Where did the conversation take place? A. At Broker's Hosiery Shop at 97 Nassau Street.

Q. Tell us about that conversation, please. A. Mr. Broker advised me again that he had received notification from abroad about another shipment, again giving me the marks and the numbers, the name of the ship, and he said as soon as we would get the papers or he would get the papers, I should again make a Foreign Trade Zone entry, give the order to P. M. Transfer and tell the Maisiellos to pick up the clocks which he needed for the substitution.

Q. Did you subsequently have the conversation with the Maisiellos? A. I did.

Q. Where did that conversation take place? A. The conversation with the Maisiellos took place a few days after the conversation with Mr. Broker.

Q. Do you know where it took place? A. At 74 Carmine Street.

Q. Tell us that conversation, please. A. I advised the Maisiellos that Mr. Broker told me about a new shipment, and I gave them the name of the ship and the approximate arrival date, (124) and I also told him that he should make arrangements to pick up the clocks.

Q. Did you receive any payment for your part in this transaction? A. I did.

Q. Whom did you receive money from? A. I received $200 from Mr. Broker after the completion and $100 from John Maisiello.

Q. How many cases were in this shipment? A. Two.

Q. You received $100 from the Maisiellos on this shipment? A. That's right.

Q. I show you Government's Exhibit 15 for identification and ask you if you have ever seen this file jacket before. A. I have.

Q. Where have you seen that file jacket? A. At the office of Alltransport.

Q. Is this jacket kept in the regular course of business of Alltransport? A. Yes, it is.

Q. Is it made in the regular course of business of Alltransport? (125) A. Yes, it is.

Q. Is there any writing on that jacket? A. Yes.

Q. Whose writing is that? A. My writing.

Q. Nobody else's writing on that jacket? A. Nobody elses.

Q. I show you Government's Exhibit 15-A for identification and ask you if you have ever seen that document before. A. Yes, I have.

Q. Is that document kept in the regular course of business of Alltransport? A. Yes, it is.

Q. Is that document made in the regular course of business of Alltransport? A. Yes, it is.

Mr. Jaffe: The Government offers Government's Exhibits 15 and 15-A for identification in evidence.

The Court: Does it refer to the last shipment?

The Witness: I beg your pardon?

The Court: Does it refer to the last shipment?

The Witness: To the shipment I was just discussing.

(126)

Mr. Feinberg: The same objection as offered before.

The Court: The same ruling.

Mr. Feinberg: May I see the jacket, please.

Mr. Jaffe: Wait until he marks it.

(Government's Exhibits 15 and 15-A for identification received in evidence.)

Q. Now, Mr. Wegner, around this time of that shipment, did there come a time when you had a conversation with Mr. Broker? A. Yes, I did.

Q. Where did this conversation take place? A. At Broker's Hosiery Shop at 97 Nassau Street.

Q. Can you fix the approximate date of this conversation? A. The earlier part of October 1955.

Q. Will you tell us about that conversation, please. A. During the conversation Mr. Broker said to me that one very valuable package was missing; it was one of the packages that the Maisiellos should have delivered to Mr. Broker after the substitution, and he was very worried about the fact that this package was missing. When I asked him what was the value, (127) he said, "Well, it was lenses and the value was about $1,500." He said I should see what I can find out from the Maisiellos and I said that I would.

I subsequently had a meeting with the Maisiellos at 74 Carmine Street, at which time I advised them what Mr. Broker had told me.

The Maisiellos again asserted or said for sure that they had not——

Q. Will you place the time of that conversation, please.

Mr. Feinberg: I move that this portion of the testimony be stricken out on the ground that it is hearsay and not in furtherance of any alleged con-

spiracy, and consequently not proper testimony at this time.

The Court: Overruled. Let us proceed.

A. The Maisiellos said for sure that they did not take the package, that everything that was in the case was delivered to Mr. Broker.

I went back to Mr. Broker and I told him what the Maisiellos had told me. At that time when I went back to Mr. Broker, he said to me, "Well, I have the feeling that the Maisiellos took it because there was someone in my store today who offered me merchandise, (128) and I recognized the merchandise, that that was the merchandise I should have gotten."

Mr. Feinberg: Objection, your Honor. That is not in furtherance of any of the alleged conspiracies that are being discussed in the court here, and that the testimony is not within the scope of the indictment.

The Court: Overruled. It is all part of the same conspiracy. Let us proceed.

A. (continuing) Then I said to Mr. Broker, "Are you sure that this is the merchandise?"

He said, "I am positive because I know the merchandise."

I said to him, "Well, Mr. Broker, what did you do? Did you buy the merchandise?"

He said, "Of course not. I would never buy the merchandise; but I will find out. Eventually the man is coming around and eventually I will see that I get hold of the merchandise."

Then he said to me, "You see, it is very difficult to deal with—to steal anything of this sort of cameras or lenses, because every camera and every lens has a serial number made in the factory." Then he cited to me a case that he had had before——

(129)

Mr. Feinberg: If the Court please, again I request that this testimony be not permitted. This has no bearing on the course of any alleged conspiracy and seems to be a coloration offered by the witness outside the scope of the indictment or the issues before the Court and jury.

The Court: That is overruled. Let us proceed.

A. (continuing) Mr. Broker said to me at the time that he had had a similar case before when on one of his regular importations of Minox cameras, he had once sold somebody—or a consignment—I don't exactly know how he said—three Minox cameras, and that this man went away somewhere else during the day and a few hours later came back to Mr. Broker's store and he said to Mr. Broker, "My God, I don't know what I did with these cameras; the Minox are very small, and I must have left them somewhere."

Mr. Broker said, "Don't worry about it. I have the serial numbers. I will report it to the police and I am sure we will find them and get them back, because these things are extremely accountable for; they have numbers, they have serial numbers."

Then Mr. Broker continued and said that (130) actually after a few months of investigation he did get these Minox cameras back; that they were found somewhere; that that

man he gave them to left them somewhere in a photo store, and that actually the cameras were finally found by the police.

Well, Mr. Broker at the time still was very concerned about that missing package, and he wanted——

> Mr. Feinberg: Objection, if your Honor please, to the characterization. I move that that testimony be stricken.
>
> The Court: Don't testify what he was concerned about. Just say what he said. You may say what he looked like, if you want to, but don't characterize.

A. (continuing) Well, he looked concerned, and he said that I should make arrangements, that he would like to meet the Maisiellos.

Q. Did you arrange a meeting with the Maisiellos? A. I did.

Q. When did that meeting take place, to the best of your recollection? A. To the best of my recollection the meeting took place a few days after that, sometime during October.

(131)

Q. Where did this meeting take place? A. The meeting took place at 74 Carmine Street. It was not in the office of P. M. Transfer.

After the meeting was arranged——

Q. Was it outside on the street? A. It was outside. I picked up Mr. Broker at 97 Nassau Street that night after office hours, after 5.30. When I left the office I went there and I picked him up and I went with Mr. Broker to 74 Carmine Street. Mr. Broker was outside on the

street—I don't know the cross street, what it is—it was about half a block away from the office of P. M. Transfer. I went and got Pat Maisiello and I told Mr. Maisiello that I had Mr. Broker here, and would he please come out.

Pat came out, and Mr. Broker, Pat Maisiello and myself took a walk around the neighborhood. During the walk Mr. Broker raised the question about the missing package——

Mr. Feinberg: Objection, if the Court please, to any summations by the witness. I think the conversation is all that is admissible.

The Court: State the conversation.

A. (continuing) The conversation was that Mr. (132) Broker said to Pat Maisiello, "Now, are you sure that you didn't take that package, because it is a very valuable package, and you know that especially this type of merchandise shouldn't get into circulation, it is dangerous."

Q. Did Pat Maisiello express any anger at this?

Mr. Feinberg: Objection as to leading the witness.

The Court: Sutained.

Let him give the conversation.

Give the conversation.

A. Pat Maisiello said that—again he mentioned to him, "Don't accuse me, Mr. Broker, of taking a package, because as I said to you before when you raised the question of the missing camera, that you trust me or you don't trust me. If I could take something, I could take the whole case; what could you do? You couldn't do anything to me."

Mr. Broker tried to calm him down, and he said, "What I would like to do is this. I am going to file an insurance claim on this missing package. I have my ways of filing an insurance claim. That is all protected abroad, as far as serial numbers is concerned, it is all arranged abroad."

(133)

Pat Maisiello was absolutely against it at that time and he said——

> Mr. Feinberg: Objection, if the Court please. I move that that be stricken. Again there is a summation rather than a conversation.

Q. Just say what Mr. Pat Maisiello told you. A. Pat Maisiello said that under no circumstances would he continue any operation of that sort with Mr. Broker in the future if Mr. Broker would claim the loss of that package with the insurance company.

Pat Maisiello said that once an insurance company gets a claim, they are very thoroughly investigating, especially this type of merchandise, which had serial numbers, and again Pat Maisiello was very emphatic that he would not continue any operation for Mr. Broker if Mr. Broker would insist——

> Mr. Feinberg: Objection. I move that that be stricken. He is summarizing the testimony again, or, rather, the conversation, instead of stating the conversation.
>
> The Court: That is overruled.
>
> I think you ought to let this witness tell the jury what the case is about, if you don't mind.

(134)

Mr. Feinberg: Yes, the conversation should be placed before the jury.

The Court: Give the conversation.

A. (continuing) After the statement by Pat, very emphatic, Mr. Broker said, "Well, don't get excited. I wouldn't file an insurance claim. Don't get excited." Then he said, "You wouldn't have to worry about that any more, Pat. You always complained before about the cases not having the right sizes, differences in weight, and nails in places where they should not be, straps being too tight, and you always complained about these things.

"Well, I thought about the things, and you know sometimes I know exactly what I have in mind and it takes a little while to crystallize, and I have a new operation in mind where you will not have to do the substitutions any more; you will not have to worry about these cases and opening up and then placing other merchandise in there; it will be a complete switch of cases."

Pat Maisiello at that time was not quite sure what Mr. Broker meant, and he said——

(135)

Mr. Feinberg: If the Court pleases——

The Court: Just give the conversation. Don't give your conclusion as to what took place.

The Witness: Pat Maisiello asked Mr. Broker what he meant, and he said, "When the time comes, I will explain it to you and I will give you all details, but at this particular time all I can tell you is there will be switches. There will be the same cases and all you have to do is switch the cases."

(136) * * *

Q. I would like to direct your attention to shipment LG 31-32. Did you have a conversation with Mr. Broker about that shipment? A. Yes. I had a conversation with Mr. Broker.

Q. When did that conversation take place? A. At Broker's Hosiery Shop, 97 Nassau Street.

Q. Approximately when did that conversation take place? A. Towards the end of October 1955.

Q. Tell us what was said in that conversation. A. In the conversation Mr. Broker said again that he had a letter from abroad, and he gave me the marks and the numbers and he gave me the name of the ship, and he said the same thing; I should make (137) sure to advise the Maisiellos so that they could pick up the clocks, and either he would get the papers or I would get the papers, and the same thing should happen, make a foreign trade zone entry.

Subsequently I advised the Maisiellos, of the name of the ship, told them Mr. Broker had told me that he should go ahead, pick up the clocks like he had always done.

A few days later Mr. Broker called me. I went to his place and he gave me the bill of lading and he said that I should go ahead and make the entry and then give the order to PM.

At that time he also said that he would like very much, since one package was missing and there was once a camera missing, if I wouldn't be there once and see how they do that, how they take out the things.

I objected. I said that I personally would not like to be there when they make a substitution because one never knows what may happen, and then I may directly be in-

volved right there and then in case somebody would find out or somebody would go, just be there when I was there.

I finally said to Mr. Broker, I will make arrangements, I will see that I will be there.

(138)

After the order was given to PM, I advised the Maisiellos that I would like to be there once just to see, and they raised no objections, of course, and I made the arrangements then and it was sometime around the early part of November. It was after the shipment was picked up.

I was advised by the Maisiellos that they had the shipment and I could come.

I went there one evening after hours, after 5.30, to 74 Carmine Street, and by the time I got there it was 6 o'clock. We closed the office 5.30.

Pat Maisiello said to me——

Q. Who was present? A. At that time? Do you mean at the time I went in or at the time when I was there when the substitution took place?

The Court: When Mr. Pat Maisiello said this to you.

The Witness: When Pat Maisiello said that to me, he was alone. There were other people in the office, but Pat Maisiello said it to me——

Mr. Feinberg: May we have a date fixed?

Q. Will you give us the time? A. The date was the earlier part of November. (139) It was a few days after—if you would check the pick-up date from the pier, it will be one or two days later, between the time from the pick-up from the pier and the time at which PM then delivered the two cases to the inland carrier after having completed the substitution.

The Court: All right, proceed.

Mr. Feinberg: Objection, if the Court please, and I move that "having completed the substitution" be stricken as calling for something which is not in evidence.

The Court: That is overruled. Let us proceed. I would like to get on with this case, if you don't mind. Let us proceed.

The Witness: Then Pat Maisiello said to me, "It is a little early. There are still drivers around. I wouldn't like to do it now, so why don't you go and eat and I will let you know when it is time."

I went in there and I ate and then Pat Maisiello came in and he had a cup of coffee, and he said, "You had better wait a little longer because I don't want any drivers here if I can help it."

About 8 o'clock at night Pat Maisiello said I should come in. I went in to the office of PM. (140) PM has an office which consists of three parts: the front part, the second part, which can be closed by a door, and the third part is sort of a storeroom where they have all kinds of things, bands and cases, and things like that.

Pat Maisiello closed the door. There was one case there. Pat Maisiello was there and also one of his drivers, Joe Teti.

At that time Pat Maisiello opened the case by pushing aside the straps, by raising the boards, taking the nails out, putting the nails aside, sliding out the boards.

When he did that, the case was covered with wrapping paper, which he then opened.

In the case were packages. I could see six or seven packages, plus one package of a 400——

Q. You just saw a package? A. I saw a package, yes. Then Pat took out, with the help of Joe Teti, the excelsior. He removed the six or seven packages, put the six or seven packages on a chair.

He then asked Joe Teti to go in the back and he went in the back and he came back with seven of these packages, which were the same size and had (141) the same container, cardboard container, as the one that was originally in the case when it was opened.

He placed them the seven clocks into the case, closed the boards, put the nails in there. He made his remark again that he is very careful with the nails, he makes sure the nails always go into the same holes; he would never put any more nails in. He would be very careful about that fact. Then he slid back the strips.

Then I left.

Q. Did you have a conversation with Mr. Broker after that meeting? A. Yes, I did.

Q. Where did that conversation take place? A. The conversation took place at 97 Nassau Street. I told Mr. Broker that I had been there and that I saw that they actually take everything out that was in the case.

A few days later Mr. Broker even told me that everything was all right, that he got everything.

Mr. Feinberg: What is the date of that conversation?

The Court: He said a few days later and previously he said it was early in November.

(142)

Q. Did you receive any payment for that shipment at that time? A. I did not receive any payment

Q. Did you have a conversation with Mr. Broker about payment of that shipment? A. Yes, Mr. Broker said——

The Court: When was this?

The Witness: That was right afterwards.

The Court: A few days?

The Witness: A few days later. It was at the time when he told me that everything was all right. Mr. Broker said he couldn't pay me right now because he was short of money and to wait until he can sell the merchandise, and he has to wait until closer to the Christmas season, and I should wait, and by that time more shipments will come in and he will give me all at once, and towards the end of December I should come; I should not come before because he is short of money.

A similar conversation I had with John Maisiello, who also told me at the time he couldn't give me the money because of the fact that Mr. Broker is also telling him that he should come the end of the year.

Q. I show you Government's Exhibit 16 for (143) identification and ask you if you have ever seen this document before (handing). A. I have, sir.

Q. Is this a document kept in the regular course of business of Alltransport? A. It is.

Q. Is it made in the regular course of business of Alltransport? A. It is.

Q. Is there any writing on that document? A. Yes, my writing.

Q. I show you Government's Exhibit 16-A for identification and ask you if that is a document kept in the regular course of business of Alltransport. A. It is.

Q. Is it made in the regular course of business of Alltransport? A. It is.

Q. Will you look at Government's Exhibits 16 and 16-A for identification and will you tell us if that is the shipment that you were just testifying about? (handing). A. Yes, sir.

Mr. Jaffe: The Government offers 16 and 16-A (144) in evidence, your Honor.

Just to make it clear, Exhibit 16 and the previous exhibit were just file jackets of Alltransport and not the documents contained therein.

Mr. Feinberg: No objection.

(Government's Exhibits 16 and 16-A for identification received in evidence.)

Q. Did there come a time, Mr. Wegner, when you had a conversation with Mr. Broker about a shipment LG 38-39? A. Yes, there was.

Q. Approximately when did this conversation take place? A. During November.

Q. Where did it take place? A. At 97 Nassau Street.

Q. Will you tell us the conversation, please? A. The conversation was that Mr. Broker called me to his place at 97 Nassau Street, and he told me that he had news about another shipment, and that either he would get the papers or we would, and he again gave me the marks, the numbers, and the name of the boat, and he told me we should make a foreign trade zone entry and I should again tell the Maisiellos to be sure to pick up the clocks.

(145)

Q. Did you call the Maisiellos? A. Yes, I advised the Maisiellos and I also gave them the name of the ship and the approximate arrival date.

Q. Did you receive a payment for this shipment? A. Payment for this shipment, together with the previous shipment I received towards the end of December from Mr. Broker at 97 Nassau Street.

Q. How much money did you receive? A. At this time Mr. Broker—it was 4 cases in total, and at this time, Mr. Broker said, "Well, as I have told you earlier during one of the meetings with John, when John wanted more money and said he couldn't give you anything any more, if I sell more, if I get a good price, I can give you more. Instead of $100 a case, I may be able to give you more."

He said, "You see, I do have more money for you. I have $115 a case, which would be $460," and at that time he said, "Well, you have made some purchases here in the store, some hosiery and bras and pants," and he took a slip out of his pocket and he added up whatever it was, and he deducted that amount and gave me the balance.

Q. Approximately how much did he give you? (146) A. About $428.

Q. During the course of shipment LG 38-39, did you have a conversation with Mr. Broker concerning air shipments? A. Yes, I had.

Q. Approximately when did that take place? A. During November.

Q. Where? A. At 97 Nassau Street.

Q. Will you tell us about that conversation, please? A. Mr. Broker told me that he has now the intentions of bringing in shipments by air, watches from Switzerland, and that then he would have them reshipped by ship to

South America. He asked me at the time all about regulations and would it be possible to do it, and is there a free zone somewhere in South America or which countries in South America do not require import licenses, so that anything could be exported to these countries without any difficulties.

I said to Mr. Broker I didn't know that, but I would ask our export department and find out, and as soon as I would know, I would let him know.

I did that. I inquired in our export department and I was told that it could be sent to (147) Mexico. It could be sent to Venezuela, and of course it could also be sent to the free zone in Montevideo.

I passed the information on subsequently to Mr. Broker at 97 Nassau Street, and during the conversation that we had about the shipment, I asked Mr. Broker several questions.

I asked Mr. Broker, well, how does he intend to do that. He brings something in by air and then he ships it out by steamer.

He said, "Well, yes, I just ship it out by steamer."

I said, "Do you have somebody in South America who will take the shipment?"

I was afraid of a repetition of the Canadian shipments——

Mr. Feinberg: I object to that and move to strike it out.

The Court: Just give the conversation.

The Witness: Yes, sir. Mr. Broker said, yes, he has somebody somewhere in South America. He didn't disclose the name or he didn't disclose the source that he had that would take care of it.

He said, "Once it goes to Montevideo, don't worry about it; I will make sure, I will send my man (148) the papers and he will make sure the shipment leaves Montevideo or do something about it. You don't have to worry."

He says, "You just give the order to PM when it comes into the airport and PM will pick it up."

I said to Mr. Broker, "This shipment is being handled by our export division. It is not handled by myself. Now, our export division, even if you give me the instructions, could very well raise the objection and say, for your own protection, it is the duty of a forwarder and customs broker to advise the customers of the most economical means of transport, and for your own protection why do you want PM Transfer? PM Transfer does not normally go to the airport. There is no justification for that. There are air truckmen who are bonded, who will take the cargo and bring it to the steamship and it will cost only $4 or $5, whereas PM will undoubtedly charge for a special trip, which would be about $20, $25."

Mr. Broker said, "That is an objection that is of course logical, but I will always have a reason and explanation."

He said, "First of all, can't I choose my (149) own truckman? It is nobody's business what I do."

I said, "That is quite true; it is the exporter's right to choose any means of transportation he sees fit, even if it is not economical."

Then Mr. Broker said, "Well, I will have an explanation. I will just tell the export department that I sort of like PM, I know him and I trust him

and I want to make sure that he does it, and also I want to add some export marks and I want to be sure that the export marks ar added to the case."

I said, "It is all right—when you get the papers."

Then Mr. Broker asked me during the conversation, "You see, this is only a trial shipment. Do you know how the things work in the airport? How are bonded cases handled at the airport? Are there any seals put on or anything so that PM couldn't do anything with the cases after he gets it to his place?"

I said to Mr. Broker, "I can't answer this because I don't know, I have never had that experience and I don't know what they do with bonded stuff at the airport."

I said, "Well, I will ask PM, maybe he knows, (150) and I will pass the information on to you."

I did subsequently have a conversation with the Maisiellos and I told them John, first of all, about the whole thing and that Mr. Broker has the intention of bringing in shipments by air——

Mr. Feinberg: May we have the time and place fixed?

The Court: Will you fix the date?

The Witness: The date was somewhere around November 1955.

The Court: The place was where?

The Witness: The place was 74 Carmine Street.

Q. I show you Government's Exhibit 17 marked for identification and ask you if this is a file jacket of the Alltransport Company (handing). A. Yes, it is.

Q. Is this jacket made in the regular course of business of Alltransport? A. It is.

Q. Is it kept in the regular course of business of Alltransport? A. Yes.

Q. I show you this document marked Government's Exhibit 17-A for identification (handing). (151) A. Yes, sir.

Q. Is this document made by Alltransport? A. It is.

Q. Is it kept in the regular course of business of Alltransport? A. Yes, sir.

Q. Do these documents refer to the shipment LG 38-39 which you have testified about? A. Yes, sir.

Mr. Jaffe: The Government offers Exhibits 17 and 17-A.

Mr. Feinberg: No objection is made to the file jacket. Objection is offered to 17-A on the same basis as heretofore made with several of the other exhibits.

The Court: Same ruling.

(Government's Exhibits 17 and 17-A for identification received in evidence.)

Q. I would like to direct your attention now to a shipment known as ZL 41-44. Did you have any conversations with Mr. Broker about that shipment? A. Yes, I did. I had a conversation at his place at 97 Nassau Street.

Q. Approximately when did this conversation take place? (152) A. The early part of December, 1955.

Q. Will you tell us what was said in that conversation? A. During the conversation Mr. Broker said, "Now, you are going to get a shipment that consists of 4 cases of tripods. I want you to tell John that this is the shipment that I had earlier discussed during the meeting we had

together with Pat. It is one of the new ideas where he doesn't have to substitute, where he just switches cases. When the next shipment comes in, I will exactly brief him and tell him what has to be done; but on this shipment I do not want him to touch it. Take it, make a Foreign Trade Zone entry, get a commercial invoice from Brakirer, make a Foreign Trade Zone entry, let him put it into the Foreign Trade Zone, but don't let him touch it."

We get the papers and passed on the information to John subsequently and told John that Mr. Broker said the shipment is not to be touched, "Just take it, put it into the Foreign Trade Zone and when the next shipment comes, Mr. Broker will advise you what has to be done. That is what has been discussed with Pat about just switching cases, no more open."

(153)

Q. Did you have a conversation with the Maisiellos about this shipment? A. Yes, I had a conversation with the Maisiellos, as I just mentioned to you, and I had another conversation with the Maisiellos.

Q. When did that conversation take place? A. During December, during the first half of December.

Q. I show you a file jacket. Is that a file jacket of Alltransport (handing)? A. It is.

Q. Is it kept in the regular course of business of Alltransport? A. Yes, sir.

Q. Is it made in the regular course of business of Alltransport? A. It is, sir.

Mr. Jaffe: That is marked 18 for identification.

Q. I show you an Exhibit marked 18-A for identification and ask if you can identify that document (handing). A. I can.

Q. Was that document made in the regular course (154) of business of Alltransport? A. Yes, sir.

Q. Was it kept in the regular course of business of Alltransport? A. Yes, sir.

Q. I show you the document marked 18-B for identification and ask you if that is a document made in the regular course of business of Alltransport (handing). A. Yes, it is.

Q. Is that a document kept in the regular course of business of Alltransport? A. Yes, sir.

Q. I show you Exhibit 18-C and ask you if that is a document made in the regular course of business of Alltransport (handing). A. Yes, sir.

Q. Is that a document kept in the regular course of business of Alltransport? A. Yes, sir.

Mr. Jaffe: The Government offers Exhibits 18, 18-A, 18-B and 18-C in evidence.

The Court: Do all those documents relate to the last shipment you discussed?

The Witness: Yes, your Honor.

(155)

Mr. Feinberg: No objection, your Honor, except that I don't see why the Government does not offer the rest of the papers in this file.

Mr. Jaffe: The Government has no objection to offering the whole file in evidence.

Mr. Feinberg: Yes, offer the whole file.

The Court: Let the whole file be marked.

(Marked Government's Exhibits 18, 18-A, 18-B and 18-C in evidence.)

Q. Mr. Wegner, have you ever heard the name Semrhib Trading Company? A. Yes, I have.

Q. Do you know who is the Semrhib Trading Company?

Mr. Feinberg: Objection as not the best evidence.

The Court: With whom have you dealt in Semrhib Trading Company?

The Witness: With Mr. Moritz Broker.

(Mr. Jaffe read Government's Exhibits 18-A, 18-B and 18-C to the jury.)

Mr. Jaffe: At this time, your Honor, the Government offers certified copy of the certificate of doing business.

(156)

Mr. Feinberg: No objection.

(Government's Exhibit 18-M for identification received in evidence.)

The Court: Suppose you tell the jury what it is.

Mr. Feinberg: If the Court please, Moritz Broker is the owner of Semrhib Trading Company, with an office, or shall I say a telephone office with a relay office in Newark, New Jersey. That is conceded.

Q. Mr. Wegner, I would now like to direct your attention to a shipment IH-74 and -75. Did you have a conversation with Mr. Broker about this shipment?

Mr. Feinberg: Objection, if the Court please. I feel that at this time I must plead with the Court to see that the proper method of introducing the evidence is followed here, with time and place specified, and the witness be not led. Now Mr. Jaffe has done——

Mr. Jaffe: Well——

The Court: Wait.

Mr. Feinberg: The Court apparently felt the other material was preliminary——

Mr. Jaffe: I object to Mr. Feinberg's characterization of the Court's feelings.

The Court: Suppose we set the time and place.

(157)

Mr. Jaffe: First I want to find out if he had a conversation about this particular shipment.

The Court: What is the number of it?

Mr. Jaffe: IH-74 and 75.

The Witness: I had a conversation with Mr. Broker on this shipment.

Q. When did this conversation take place? A. The conversation took place in the very early part of January, 1955.

Q. 1955? A. 1956, I mean. I am sorry. It was at 97 Nassau Street.

Q. Tell us about this conversation. A. Mr. Broker said at the time that he has now a shipment that was discussed previously with P. M. Transfer that is in connection with the ZL shipment that is in the Foreign Trade Zone, and that these cases will be consigned to us and that these cases will go to our correspondents in Toronto, and that we will get direct instructions from S. Brukirer to forward that, and then when we get the papers I should make sure that the withdrawal of the four cases from the Foreign Trade Zone, is so arranged for such a time that P. M. would be in possession—the Maisiellos (158) would be in possession of three or four of these cases in his place at the time when he picks up the two cases IH, because

he had already advised Pat that these are the cases, that all he has got to do is just—you see, he said to me, "The cases are very identical, the same case, the same size, everything, the same wood. All he has got to do is take the board from the two cases, take the boards from the other two cases out of the four cases; he has only to take boards from two cases, and all he is doing is switching the boards. You see, the case has an extra board on top. It is very simple. All he does is change the boards and he delivers the two cases to me, and the other two cases he delivers to the carrier."

I said, "What is going to happen with the cases in Canada?"

He said, "You will get instructions. That I don't know yet. We may send them back; I may send them to Newark, anywhere; I may even take them in Canada, I don't know."

Q. Did you have a conversation with the Maisiellos about that? A. Yes. I told the Maisiellos——

(159)

Mr. Feinberg: Objection, if the Court please; no foundation has been laid. We go through this each time.

Q. Approximately when did you have a conversation with the Maisiellos? A. Very shortly, the day or the day after I had the conversation with Mr. Broker; it was the early part of January.

Q. Where? A. 74 Carmine Street. I told John about that, that he will get all the necessary papers; that he will get the papers to take out the cases from the Foreign Trade Zone, and that he will get the papers also for the two cases IH-74 and 75 as soon as we had the papers.

Q. Did you do anything about the shipment after the conversation with Maisiello? A. The next thing was that Mr. Broker told me and said he had the papers, I should come to him, and he had the papers.

Q. Approximately when was this conversation? A. That was between the 10th and 12th or 13th of January.

Q. Did you go to visit Mr. Broker? (160) A. Yes, I did.

Q. When did you visit Mr. Broker? A. I visited Mr. Broker on the 12th or the 13th of January.

Q. Did you have a conversation with him? A. I did.

Q. Was this at 97 Nassau Street? A. Yes.

Q. Tell us the conversation. A. Mr. Broker gave me at that time the original bill of lading for the two cases. He also gave me a letter from S. Brukirer that was addressed to Alltransport. As a matter of fact, before the letter came to Mr. Broker—may I continue——

Q. Just continue about that conversation. Don't worry about going back. A. Mr. Broker said, "Here is the shipment. Find out approximately at what time the boat arrives, when the boat arrives, and make sure that you pay duty on the four cases that are in the Foreign Trade Zone. Make sure too that you give the order to P. M. and tell them that they should just hold these cases, and when the other cases come they have to make the switch. I told them all about it. I told them how to do it. (161) You just give them the papers."

I took the papers and I went back to the office of Alltransport and went upstairs to the mailroom and put the incoming mail stamp on, the letter from Brukirer.

The same day, I called the Foreign Trade Zone and I ordered a constructive transfer which, for your benefit, is a document——

Q. No, just say what you did. A. —a constructive transfer, in order to enable the Alltransport, Inc. to make a consumption entry and pay the duty.

I got the constructive transfer from the Foreign Trade Zone and made a duty-paid entry. Delivery instructions after duty was paid in accordance with instructions of Mr. Broker were made to be delivered to Embrohs Trading at 97 Nassau Street.

When the steamer came in with the cases HH-74 and 75 after the entry was made in bond to Toronto, I gave the order to P. M. Transfer, and P. M. Transfer then took the order and made the necessary arrangements to pick up the cases.

A few days later, and continuously from that moment on until January 27th I was asked by Mr. Broker (162) on the telephone repeatedly what I knew about the shipment, had P. M. picked it up, was it unloaded, when is it going to be delivered, how is the situation.

I said to Mr. Broker, "I don't know. I will switch you over to P. M." At that time we had our own extension, Alltransport had a telephone extension with P. M., so I just flashed the call right over to P. M.

On the 27th of January, in the morning, John Maisiello—it was a Friday—John Maisiello came to our office, which was in itself unusual because normally he did not——

Mr. Feinberg: No.

Mr. Jaffe: Don't characterize.

The Court: Just say what he said.

The Witness: I beg your pardon.

A. (continuing) He came to the office and said—I said to him, "What are you doing here?"

He says, "Well, I have to see the other customers of mine and collect checks and so and so."

I said to him, "John, what happened to these two cases? Mr. Broker is calling me all the time. He never called on the other cases as much as on these cases; he has just occasionally asked how is the (163) situation, how is John doing, when is the boat unloading, and so and so; but on this shipment he is always asking, and I don't know; I just switch him over to Pat or whoever is answering the phone."

I said, "What is it now? Have you picked it up? What are you doing?"

John said, "I don't know. I couldn't pick it up up to now because it wasn't off the ship, but I will pick it up, and as soon as I pick it up I will take care of it."

Then John left and said he would see me later.

Then——

Q. Do you remember what day of the week that was? A. That was Friday.

Q. Go ahead. A. Then John came to the office and he said—he came in during lunch, and he said, "Well, you want to have a bite?"

The Court: Wait just a minute. When was this?

The Witness: The very same day, around the 27th.

Q. All the testimony you are about to give is about Friday, the 27th of January? A. Only Friday the 27th.

(164)

I went to—I had lunch with him, and I said again to him, "I don't know. Broker is always asking me this and that and to make sure the cases are delivered; and why aren't they delivered? He doesn't understand it, it is a few days after the ship is in; it should be out."

He said, "As soon as it is off I will deliver it. I will take care of the switch and I will give it to him."

Then I went back to the office at 1.15, the time the lunchtime is over.

Mr. Broker kept on calling me, and he said to me, "Now, do you know when I am going to have the cases?"

I said, "Mr. Broker, I don't. I spoke to John. I don't know. You spoke to P. M. yourself, didn't you?"

He said, "Yes, but I don't know. Why can't you find out? You must insist that John deliver the cases this afternoon. I don't care what he does, even if he delivers them to my home, he must deliver the two cases to me, even if he has got to come to me and I will give him the boards."

I then——

(165)

Q. Did you meet——

Mr. Feinberg: Why does he interrupt? Let the witness continue.

The Court: Finish the conversation.

Mr. Jaffe: Your Honor, Mr. Feinberg is making remarks as he sits down, and I would appreciate it if he would direct it to the Court.

The Court: Don't make any remarks within the hearing of the jury, Mr. Feinberg.

Mr. Feinberg: Yes, sir.

The Court: Let us proceed.

A. (continuing) John then came back—passed by the office again, and I said to him, "I don't know, Mr. Broker is asking me again——"

The Court: This is still the same day?

The Witness: Yes, sir.

A. (continuing) "Mr. Broker is very insistent and I should tell you you have got to deliver it even if you deliver it to his home or even if you have to deliver it to his place, and he will give you the boards."

So John said—he went out with me on the street and said, "Oh, no, I wouldn't do that at all. You just tell Mr. Broker I wouldn't do that. You (166) just tell Mr. Broker I wouldn't do that. I will do it the regular way. I wouldn't deliver and then he gives me the boards; that is out of the question. It is absolutely out."

* * * *

(168) * * *

Q. I show you this jacket marked Government's Exhibit 19 for identification and ask you if you can identify this jacket. A. I can.

Q. Is this a jacket of the Alltransport Corporation? A. It is, sir.

Q. Is it kept in the regular course of business of Alltransport? A. Yes, sir.

Q. Is it made in the regular course of business of Alltransport? A. It is.

Q. Does this jacket refer to III, 74 and 75, the shipment you just testified about? A. It does.

Mr. Jaffe: The Government offers the jacket at this time.

Q. I show you Government's Exhibit 19-A for identification and ask you if you have ever seen that (169) document before.

Mr. Feinberg: Excuse me, Mr. Jaffe. Would you be good enough to wait until we conclude with this? I would like to hear what is going on too.

The Court: All right.

Mr. Feinberg: I offer objection to this jacket on the ground that the defendant or the defendant's companies do not appear anywhere on the face thereof, nor does the defendant's name appear anywhere on the writing I see on the jacket, and anything therein contained would not be binding on this defendant.

The Court: Does that jacket refer to the shipment you have just been discussing?

The Witness: It does.

The Court: It is overruled. It will be admitted.

(Government's Exhibit 19 for identification received in evidence.)

Q. I show you Government's Exhibit 19-A for identification and ask you if you have ever seen that document. A. I have.

Q. Where did you first see that document? A. I first saw the document at the Broker Hosiery Shop, 97 Nassau Street, where it was handed to me by (170) Mr. Broker.

Q. Did you put that document into the file of Alltransport? A. I did.

Q. Is t ... a letter kept in the regular course of business of Alltransport? A. It is.

Q. Is that referring to shipment III 75 and 74? A. Yes, it does.

Q. Is that letter in the German language? A. It is.

Q. And you speak and write German? A. I do.

Mr. Jaffe: Your Honor, the Government offers Exhibit 19-A for identification in evidence.

Mr. Feinberg: Will you clarify this interlineation?

Mr. Jaffe: The Government is not offering the red line.

Mr. Feinberg: I don't know what is being offered. I see a document.

Mr. Jaffe: There is a red line under certain words and the Government is not offering the red line.

Mr. Feinberg: Will the document be admitted without the red line, because I offer objection to this document as also something directed to Alltransport; (171) it has no bearing on the defendant Proker, nor does it have anything relating to the defendant's companies.

Q. Is this the letter you testified you received from Mr. Broker about the 12th or 13th? A. It is.

Q. That you stamped with Alltransport's receiving stamp? A. I did.

The Court: It is overruled. It will be admitted in evidence.

Q. Will you read this? A. It is dated January 9, 1956, to Alltransport, Inc., 6 State Street, New York 4.

"Honorable Firm:

"I ask you herewith to send these two cases of tripods in a value of $200 in transit to your representative in Toronto, Canada. Further instructions you will receive from me within two weeks which you will please at that time pass on to your representative. All expenses in connection with this transportation are to be billed to me.

"I attach herewith an original bill of lading.

(172)

"I thank you in advance and greet you,
"Sincerely yours, S. Brukirer."

Q. Is this the letter you received from Mr. Broker at 97 Nassau Street? A. Correct.

Q. I show you Government's Exhibit 19-B for identification and ask you if you can identify that document. A. I can.

Q. Is this kept in the regular course of business of Alltransport? A. It is, sir.

Q. Was it received in the regular course of business of Alltransport? A. It was.

Q. Was it directed to Alltransport? A. Yes.

Q. Does it have an Alltransport stamp on it? A. It does.

Mr. Jaffe: The Government offers it in evidence. It is also in the German language, your Honor.

Mr. Feinberg: In addition to the objections heretofore offered, I offer the further objection that this apparently is stamped after the conclusion of (173) the alleged acts concerning which this defendant is on trial.

Mr. Jaffe: Your Honor, the indictment reads up until the filing of the indictment and this day——

The Court: Does this relate to the shipment III 74 and 75?

The Witness: It does, your Honor.

The Court: It is overruled. It will be admitted.

(Government's Exhibit 19-B for identification received in evidence.)

Q. Will you translate this fully, please? A. I do, sir.

"P.S X.143-P, Munich 25, 30—1810—"

Q. What does that mean? A. That means the 30th of January at 0810. At 8.10 a.m.

Q. Continue, please. A. "Alltransport, 6 State Street, New York.

"Please, these two cases to redeclare as watches and immediately by airplane send to Geneva since here is an error.

"Brukirer."

Q. I show you Government's Exhibit 19-C and ask you if you have ever seen that document before. (174) A. I have.

Q. Is that a document received in the regular course of business? A. It is.

Q. Of Alltransport? A. Yes.

Q. Is it kept in the regular course of business of Alltransport? A. Yes.

Q. Is it directed to Alltransport? A. Yes.

Q. Does it have an Alltransport receiving stamp on it? A. It does.

Mr. Jaffe: The Government offers this letter. It is also in the German language, your Honor, and there is a translation of it.

Mr. Feinberg: I will object to the translation.

Mr. Jaffe: Your Honor, we won't offer the translation.

Mr. Feinberg: Well, the translation is on the document.

Mr. Jaffe: We will fold the document over at that point, your Honor.

Mr. Feinberg: Same objection offered as to the others.

The Court: Overruled.

(175)

(Government's Exhibit 19-C for identification received in evidence.)

Q. Will you translate 19-C in evidence fully? A. On the letterhead of S. Brukirer, Munich, dated the 31 January 1956, addressed to Alltransport, Inc., 6 State Street, New York 4, N. Y., U. S. A.

"Refers, 2 cases, IH 74-75.

"Honorable Firm:

"I ask you to please redeclare the two cases as watches (watch movements) and please immediately by airplane to return to send to Geneva Switzerland since here is a mistake.

"I await your news soon and I greet you.

"Sincerely yours, Brukirer."

Q. I show you Government's Exhibit 19-D for identification and ask you if you have ever seen this document before. A. I have.

Q. Is that a document directed to Alltransport? A. It is.

Q. Is it kept in the regular course of business of Alltransport? A. Yes, sir.

Q. Does it have an Alltransport receiving stamp on it? A. It does.

(176)

Mr. Jaffe: The Government offers this minus the translation at the bottom, your Honor.

Mr. Feinberg: Same objection offered.

The Court: Same ruling.

(Government's Exhibit 19-D for identification received in evidence.)

Q. Will you translate this document fully? A. Western Union telegram PSB 244 ZP Munich, 25-12, Alltransport, 6 State Street, NYK 4.

"These two cases immediately by airplane to send to Geneva. Firm Semrhib has nothing in common with these watches.

"Brukirer, Munich."

Q. Is there any place in Geneva to send those cases in that telegram? A. No address.

Q. I show you Government's Exhibit 19-E for identification and ask you if you have ever seen that document before. A. I have.

Q. Is that document addressed to Alltransport? A. It was.

Q. Was it received by Alltransport? A. Yes, sir.

(177)

Q. Is it kept in the regular course of business of Alltransport? A. It is.

Mr. Jaffe: The Government offers this minus the translation, your Honor.

Mr. Feinberg: Same objection is offered.

The Court: Same ruling.

(Government's Exhibit 19-E for identification received in evidence.)

Q. Will you translate this fully, please? A. On the letterhead of S. Brukirer, Munich, dated February 13, 1956, to Alltransport, Inc., 6 State Street, New York 4, New York, U. S. A.

"Refers: 2 cases III 74-75.

"Honorable Firm:

"I ask you herewith again politely to send these two cases"—I beg your pardon, please—"These two cases to redeclare as watches and immediately by airplane to send to Geneva Switzerland, since here is a mistake.

"I further advise you again that the firm Semrhib Trading Company had nothing to do with these watches.

"I await your immediate reply and I greet you.

(178)

"Sincerely yours, Brukirer."

Q. Is there an address or a forwarder in this letter?

Mr. Feinberg: Objection, if your Honor please. The document speaks for itself.

The Court: Has he read it?

Mr. Jaffe: Yes.

The Court: Has he read all of it?

Mr. Jaffe: I believe so.

The Witness: I have read everything.

Q. I show you Government's Exhibit 19-F for identification. A. Yes, sir.

Q. I ask you if that letter is kept in the regular course of business of Alltransport. A. It is.

Q. Does it have an Alltransport receiving stamp on it? A. It does.

Q. Is it directed to Alltransport? A. It is.

Mr. Jaffe: The Government offers this minus the translation.

Mr. Feinberg: Same objection.

The Court: Same ruling.

(179)

(Government's Exhibit 19-F for identification received in evidence.)

Q. Will you translate this fully, please? A. On the letterhead of S. Brukirer, Munich, dated March 13, 1956, to Alltransport, Inc., 6 State Street, New York 4, N. Y., U. S. A.

"Refers: 2 cases III 74-75.

"Honorable Firm:

"We ask you again politely to send 2 cases of watches as fast as possible by airplane to Switzerland since we would very much appreciate that if you would do everything possible to do that. We ask you to advise us by return.

"We post thanks in advance.

"We greet you.

"Most sincerely, S. Brukirer."

Q. Before you testified you had a second conversation, I believe it was, with Pat Maisiello, concerning an air shipment that Mr. Brukirer had spoken about. Would you try and place the time of that conversation and the place of that conversation? A. The time was in the middle of November 1954, and it was at 74 Carmine Street.

Q. What was that conversation about? Who was (180) present? A. At that conversation Pat.

I advised Pat that as soon as we have the papers for the air shipment we would give if to him.

Q. Did you subsequently get papers for that air shipment? A. Yes.

Q. Did you have a conversation with Mr. Broker about that air shipment? A. Yes. At 97 Nassau Street.

Q. Approximately when did you have that conversation? A. The conversation was—I can't place the exact time—it was the end of November.

Q. Will you tell us about that conversation, please? A. During the conversation Mr. Broker said that as soon as we get the papers for the air shipment we should make sure just make the necessary arrangements, make the entry, then give the papers to PM.

And I said to Mr. Broker, "Well, when it comes to an air shipment, that has to go to South America, that is a matter for the export department. So you just can't tell me and I pass it on"——

Mr. Feinberg: If I am not in error, these questions have already been asked and answered before. This seems like repetition.

(181)

The Court: This conversation has been given. Now, is there something additional about this conversation?

Q. Did you subsequently receive papers on an air shipment, not you, but did Alltransport receive papers on a shipment? A. Yes.

Q. Do you know where that shipment came from? A. The shipment came from Switzerland.

Q. Do you know where the shipment was sent? A. It was sent to Montevideo.

Q. Do you know what the contents of that shipment were? A. Declared 1 case of watches.

Q. Did Pat or John Maisiello tell you—did you have

a conversation with Pat or John Maisiello about this shipment? A. Yes, I had. I had a conversation with Pat.

Q. After the shipment had left the United States? A. That is correct.

Mr. Feinberg: I will object to the leading of the witness, which seems to be the general tenor of this particular examination.

The Court: Don't lead the witness.

Mr. Jaffe: May I have this marked for identifica-
(182) tion?

(Marked Government's Exhibit 20 for identification.)

Mr. Jaffe: Just so we don't——

The Court: Just ask him the question.

Q. Did you have a conversation with Pat Maisiello concerning an air shipment ATS? A. Yes.

Mr. Feinberg: I object to that as already having been asked and answered. I think this is the third time we have got into the thing.

Mr. Jaffe: This covers two years——

The Court: Well, did you have a conversation with him after this shipment?

The Witness: I certainly did.

The Court: What date was that conversation? About when?

The Witness: I cannot give you the exact date on that.

The Court: When was it?

The Witness: It was a few days after the shipment was handled by PM and delivered to the ship.

The Court: The ship going where?

The Witness: Going to Montevideo.

(183)

The Court: Give us the conversation.

The Witness: The conversation——

Mr. Feinberg: Excuse me, sir. I still can't get the date.

Q. If I would show you the export file on this shipment of Alltransport, would that refresh your memory? A. It most certainly would.

Q. Would you look at it and see if it will refresh your memory? A. It certainly does.

Q. Will you tell us the approximate date of the conversation you had with Pat Maisiello? A. After January 20th.

Q. Of what year? A. 1956, at 74 Carmine Street.

Mr. Feinberg: If the Court please, since we are reaching very close to the end of the line, I think the specific date is very important, or, at least, within a day or two span.

Q. The best date that you can recollect. A. The best date I can recollect is, if I am permitted to look at the delivery receipt——

The Court: Well, look at it.

The Witness: Very shortly after January 19th, (184) two or three days after.

Mr. Feinberg: I will object, if the Court please, without a more specific limitation.

The Court: Overruled. He said two or three days after January 19th.

A. The conversation that I had was with John and Pat Maisiello, and during the conversation John said to me, "I don't know what this man Broker is doing to me. Now, on this shipment after I picked it up and want to make the exchange, he comes to my place with a scale and he is bringing me books to put into the case"——

Mr. Feinberg: Objection, if the Court pleases. This is not testimony in furtherance of any act of the alleged conspiracy, or any conversation pertaining to the furtherance of this alleged conspiracy.

The Court: Objection overruled. Proceed.

The Witness: He says, "I don't know what this man Broker is doing to me. He comes to my place with a scale and he brings books. What should he put books in? This is the shipment where I take out watches and put in clocks and he is putting books in?"

(185)

I says, "I don't know; Mr. Broker has not told me anything of his intentions, what he is going to put in or what he is going to give you, and I certainly will mention that to Mr. Broker."

Subsequently, the very next day, I had a conversation with Mr. Broker——

Q. Will you just listen to the questions that I asked? A. I beg your pardon, sir.

Henry Wegner—for Government—Direct

Q. During the course of this conversation did Pat Maisiello say that Mr. Broker came to 74 Carmine Street?

Mr. Feinberg: Objection as leading the witness, and I move to strike out the question.

The Court: The objection is sustained. The question is stricken.

Mr. Feinberg: Meanwhile, the purpose has been accomplished. This has been going on all the time.

The Court: And the clock has been going on all the time, too.

Q. Was that all the conversation you can remember at 74 Carmine Street? A. That is correct.

Mr. Jaffe: No further questions, your Honor.

The Court: Your witness.

(186)

Mr. Jaffe: Your Honor, I have no further questions. It is just a question of offering all the documents we talked about yesterday. At any time that Mr. Feinberg wants to look at all the documents, we have them all numbered and any time Mr. Feinberg wants to look at them, he may, and then we can have this witness recalled just for the purpose of putting in those documents.

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(378) * * *

MURRAY JACOBS, called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct examination by Mr. Jaffe:

Q. Mr. Jacobs, will your state your title, please? A. I am Deputy Collector of Customs in the Port of New York.

supervisor of the transportation section in the office of the Collector of Customs.

Q. How long have you been in the employ of the Customs?

Mr. Feinberg: We will accept his qualifications.

Q. What are the functions and procedures of the transportation section of the Customs Service? A. The functions of the transportation section are to discharge the responsibilities outlined in the (379) Tariff Act of 1930, Sections 551, 552 and 553 specifically, but we actually implement the documentation with respect to all types of inbound movements of merchandise through the Port of New York, either coming into the Port of New York destined for other ports of the United States or destined for foreign countries, and merchandise which comes from other ports to be exported from the Port of New York.

Q. Are IT entries under your supervision. A. IT, T & E, direct export entries; and if you wish, I will explain those.

Q. Also Foreign Trade Zone entries? A. Yes.

Q. Will you explain what these entries are? A. The IT, the T & E; and the IE entries are documents which purportedly contain the declarations of the interested parties, presumably the consignees or the importers of merchandise, who wish to dispose of the merchandise in accordance with the Tariff Act by seeing to it that they are either in transit through the United States, from one foreign country to another or in transit from a port in the United States to another port in (380) the United States, there to be entered in accordance with the tariff.

Q. When you speak about another port in the United States, is that necessarily a sea port? A. Not necessarily.

It can possibly be an interior port. That would be the IT entry. A T & E entry indicates that the merchandise has been declared by the interested party to be destined through the United States or in transit through the United States, where it arrives at one port in the United States and is intended to be exported to another foreign country but through a second port. For example, merchandise may be coming into the Port of New York destined for Canada. It goes from New York in bond to a border port like Rouses Point or Niagara Falls and is exported into Canada. The IE entry, on the other hand, is the same type of transportation entry excepting for the fact that merchandise arrives at one port and is intended to be in transit through the United States from the very same port to which it arrives without hitting or touching another port. That is the direct or immediate export entry.

(381)

Q. And the Foreign Trade Zone entry? A. The Foreign Trade Zone entry is a declaration on the part of the interested party to have transferred to our Foreign Trade Zone here in the Port of New York, which is located in Staten Island, merchandise which arrives from a foreign country but for which he may not have any intended disposition as yet. The Foreign Trade Zone has been established and created for several purposes—storage, manipulation and manufacture, where merchandise which is transferred to such locality can be manipulated, sorted, repacked, cleared and other things may be done to it there, after which if he attempts to withdraw it from the Foreign Trade Zone, he must comply with all of the regulations of the tariff.

Murray Jacobs—for Government—Direct

Q. Under those four types of entry does the Customs Service normally examine the contents coming into the United States on its arrival? A. The Customs regulations of 1943 indicate that merchandise which is in transit through the United States or has not been entered under a formal type of entry is not examined or inspected (382) in any way.

Q. Can it be examined? A. No, the regulations prohibit it. May I amend that or add something to it? The regulations prohibit it unless it be for the exclusive benefit of the United States itself.

Q. If it is not, is written permission needed? A. Yes.

Q. Are these four types of shipment normally called bonded shipments? A. They are known as bonded shipments, that is true.

Q. Are they normally carried by licensed Customs people? A. Carried by licensed Customs people?

Q. If they are taken to another pier or to a dock or a harbor, would the person have to be licensed to carry these shipments? A. Definitely so. They must be bonded to the United States in some way.

Q. Is the trucker who carries a bonded shipment allowed to tie up over night or over a weekend? A. Upon occasion, when a truckman receives (383) merchandise for transfer to some other point in a port, if he finds it necessary or if he finds it inconvenient or impossible to deposit or deliver that merchandise to the appointed point of discharge, he may call in to the Customs House and ask for permission to tie up at his terminal or at premises close by.

Q. Are you in charge of the files of the transportation section? A. I am.

(Government's Exhibit 22 marked for identification.)

(384)

Q. I show you Government's Exhibit 22 for identification. Is that a file kept under your supervision? A. That is a file—it is a file of an IT entry——

Q. This is a file kept under your supervision? A. Yes.

Q. Is it a file made in the regular course of business of the Customs Service? A. Yes.

Q. Is it kept in the regular course of the Customs Service? A. It is.

Q. Is it an official Government file? A. It is.

Mr. Jaffe: The Government offers this in evidence, your Honor.

Now will you mark this for identification.

(Marked Government's Exhibits 23 and 24 for identification.)

Q. Are Government's Exhibits 23 and 24 for identification kept under your supervision? A. They are.

Q. Are they kept in the regular course of (385) business of the Customs Service? A. They are.

Q. Are they made in the regular course of business of the Customs Service? A. They are.

Q. Are they official Customs Service records? A. They are.

Q. The same with Government's Exhibit 25 for identification? A. This is.

Mr. Jaffe: Will you mark this for identification

(Marked Government's Exhibit 26 for identification.)

Q. I show you Government's Exhibit 26 for identification and ask you the same questions. A. This is a file similar to the ones that have been shown before.

Mr. Jaffe: The Government offers all these.

Q. Do you know——

Mr. Feinberg: Would you mind waiting just a moment, Mr. Jaffe?

The Court: Wait just a second.

(386)

We will take a five minute recess.

(Recess taken.)

Mr. Feinberg: No objection to Exhibits 24 and 25.

A blanket objection with reference to Exhibits 22, 23 and 26.

The Court: Overruled. They will be admitted in evidence.

(Government's Exhibits 22, 23, 24, 25 and 26 for identification received in evidence.)

By Mr. Jaffe:

Q. I show you Government's Exhibit No. 22 in evidence and ask if you will explain what happened to that shipment. Give us the name of the shipment and explain what happened to that shipment. A. This is Exhibit 22, and it is an IT entry or an immediate transportation entry without examination or appraisement, which would indicate that there arrived at the Port of New York under date of October 19, 1954, a shipment presumably containing two cases of table clocks.

They were entered for immediate transportation to the Port of Chicago, Illinois, by (387) Alltransport, Incorporated who I know are Customs House brokers.

Alltransport, the Customs House brokers, submitted these documents to Customs for approval, designating CHL, Customs House License No. 1237——

Q. Do you know who has that license? A. The name of the Customs House license which has been designated 1237 is the PM Transfer Company.

They were to transfer the two cases of clocks from the pier at the foot of 17th Street, Brooklyn, where the merchandise was discharged to the common carrier, Lifschultz Fast Freight, which was located at Pier 64, North River, and from that point the common carrier, Lifschultz Fast Freight, was to take it to the Port of Chicago, Illinois and deliver it to the Collector of Customs there.

This is known as an IT entry. The merchandise was permitted to be transferred under date of November 20, 1954.

Q. Does it show the date that the licensed carrier picked it up and the date it was delivered? A. Under date of October 22, 1954, the (388) merchandise was received by CHL-1237, PM Transfer Company, and taken to, or presumably taken to Lifschultz Fast Freight at Pier 64, North River.

However, the Inspector of Customs at 64 North River indicates that the merchandise was received by Lifschultz Fast Freight on October 26, 1954 and placed in car 164771 for transportation to the Port of Chicago, Illinois.

Further than that, the merchandise was received by the Collector of Customs at Chicago and accounted for at that particular port.

Q. Does that mean the merchandise stayed in Chicago, or could have gone on——

Mr. Feinberg: Objection.

A. Under the terms of——

The Court: Just a minute.

Mr. Feinberg: I offer objection to what could have happened to the merchandise. I think this gentleman is testifying from what he sees in the file.

A. (continuing) I was going to indicate that as long as the Collector of Customs at Chicago indicates that he had received the merchandise, that any further disposition of the goods could (389) be made under the Tariff Act at Chicago.

Q. What are the numbers or marks on the case? A. The marks on the case purportedly are AZ-42 and 43. Those are the case numbers.

Q. I show you Government's Exhibit 23 and ask you if you will explain this Customs file? A. This is a T & E entry, or an entry for transportation and exportation which arrived at the Port of New York under date of February 23, 1955 on the Steamer Scott. It was said to contain two cases of clocks marked 48 and 49.

It was entered for transportation and exportation by Alltransport, the same Customs House brokers as the previous entry, to Canada through the Port of Champlain, New York.

The merchandise arrived and was discharged at Pier 59, North River, and Alltransport designated CHL, or the

Customs House License No. 1237, the same PM Transfer Company to transfer it from Pier 59 to the terminal of the common carrier, Maisland Bros. at 28 North River.

Q. Does the file show it was received by Maisland Bros.? A. The file shows it was received by PM (390) Transfer Company and also received by Maisland Bros. under date of February 28, 1955, and Maisland Bros. transported it to the Port of Champlain.

Q. The Port of Champlain? A. Champlain, New York.

Q. I show you Government's Exhibit 24 in evidence and ask you if you will tell us what that is? A. Exhibit 24 is a——

Q. Excuse me. Did you mention the marks on this shipment? A. I did. MS-48 and 49. I did it when I described it originally.

Q. Thank you. A. Exhibit 24 is an application to transfer to the Foreign Trade Zone at New York four cases of camera tripods marked ZL Nos. 41 to 44. The designated Customs House licensed truckman was PM Transfer Company, Customs House License 1237.

It was received PM Transfer and later received in the Foreign Trade Zone.

Q. Does it indicate when it was taken out of the Foreign Trade Zone? A. It indicates that under date of January (391) 25, 1956 the four cases were withdrawn from the Foreign Trade Zone under consumption entry, duty paid consumption entry 840926. Three of the cases were released to the Importer and one case was transferred to the Public Stores for examination.

Q. Is there an indication——

Mr. Feinberg: There is only one point on that, if I may. May I see the file for a moment, please?

Murray Jacobs—for Government—Direct

The Court: Yes.
(File handed to Mr. Feinberg.)

By Mr. Jaffe:

Q. I show you Government's Exhibit 25 in evidence and ask you to explain this file. A. This is a dutiable consumption entry submitted to Customs at New York for four cases of camera tripods marked ZL Nos. 41 to 44.

The entered value of the four cases was indicated as $595. It was entered under paragraph 397 at 22½ per cent ad valorem duty, making a duty of $133.88, which was paid under date of January 17, 1956.

Case No. 42 of the fo: cases, 41 to 44, (392) case No. 42 was designated for examination at the Public Stores, and according to the previous record that case was transferred to the Public Store for examination.

Q. Does Government's Exhibit 25 concern the same shipment as Government's Exhibit 24? A. Presumably it does since the markings are the same and since that record indicates that the merchandise was withdrawn from the Foreign Trade Zone from the same lot under which it arrived at the Foreign Trade Zone.

Exhibit No. 24 indicates that the merchandise was transferred to the Foreign Trade Zone under entry No. 57868, and these four cases which were entered for consumption were withdrawn from lot 57868.

Q. For whose a ount was this merchandise entered? A. It was apparently for the account of the Semrhib Trading Company of 972 Broad Street, Newark, New Jersey.

Q. And was it taken out for anyone account? A. It was taken out for the account of the Semrhib——

(393)

Q. Who entered it into the Trade Zone? A. Alltransport.

Q. For whose account was it entered in the Trade Zone?

Mr. Feinberg: Objection. I think the record will speak for itself.

Mr. Jaffe: I won't press that.

Q. I show you Government's Exhibit 26 in evidence and ask you to explain that file. A. This is——

Q. Will you explain this more thoroughly than the other?

Mr. Feinberg: Excuse me a moment, I think I missed that one. Finish that one, Mr. Jaffe. I just would like to take a look at it.

A. Exhibit No. 24 is a T & E. No. 80406, which indicates that Alltransport, Incorporated, Customs brokers applied for a transportation and exportation of two cases of tripods marked H-74 and 75, which arrived at the Port of New York under date of January 23, 1956, at the foot of Smith Street, Brooklyn, for transportation and exportation to Canada, to Toronto, Canada, via the Port of Champlain, New York.

(394)

A designated CHL, Customs House licensed truckman 1237 to transfer it from Smith Street over to 28 North River, the terminal of the common carrier which was to transport it to Champlain, and from that point into Canada.

This exhibit indicates that the two cases were received by PM Transfer Company, the Customs House licensed truckman, but there is no indication on the record as yet that the merchandise was ever received by Maisland Bros. for transportation to Canada.

Q. Do you know if watch movements have to be declared under the Customs law? A. I would say——

Mr. Feinberg: I think the Court will take judicial notice of these things.

The Court: Well, the law provides that that, as well as anything else, must be declared.

Q. Do you know whether there is a duty on watch movements? A. I know that there is a duty on watch movements.

Q. Do you know if there is a duty on cameras? A. I don't know offhand.

(395)

Mr. Jaffe: The Government has no further questions of this witness.

The Court: Your witness, sir.

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(473)

DANIEL J. O'CONNELL, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Jaffe:

Q. Will you state your occupation, Mr. O'Connell? A. I work for the U. S. Customs Service.

Q. What is your title? A. Administrative assistant.

Daniel J. O'Connell—for Government—Direct

Q. And what are your duties? A. To receive and store seizures for the Collector of Customs, Port of New York.

Q. Will you step down and look at Government's Exhibit 33 for identification, Government's Exhibit 29 for identification, Government's Exhibit 30 for identification, Government's Exhibit 28 for identification and 27 for identification? A. Yes.

Q. Have you ever seen these exhibits before? A. Yes, I have.

Q. Where did you see these exhibits before? A. I received these exhibits from Customs Agent McVeigh.

Q. When did you receive them? A. On February 1st.

(474)

Q. Can you tell us if anything was in any of the Government's exhibits you have just examined? A. The three cases were empty.

Q. Was anything in the two cartons? A. There were eight packages containing 4,488 watch movements.

Q. In the two cartons? A. Yes.

Q. Will you open up—will you check and see if there are eight packages in the two cartons? A. That is right.

Q. Are these the eight packages that were placed in the case? A. Yes, they are.

Q. Who placed them in the case? A. I did.

Q. Have you had these Government's exhibits under your control since they were delivered by Customs Agent McVeigh? A. Yes, I have.

Q. Until they were delivered to the courtroom this morning? A. That is right.

(475)

Mr. Jaffe: No further questions.

* * * *

(477)

MARTIN M. MCVEIGH, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Jaffe:

Q. How long have you been employed by the Customs Service? A. 19 years.

Q. Were you employed on January 27, 1956? A. I was.

Q. Were you working in your official capacity (478) at that time? A. Yes, sir.

Q. Will you tell us where you were stationed on the morning of the 27th? A. In my office at 201 Varick Street.

Q. Did you subsequently go to a Pier? A. Yes, sir.

Q. Which pier did you go to? A. The pier at the foot of Smith Street in Brooklyn.

Q. What did you do when you reached the pier at the foot of Smith Street, Brooklyn? A. I remained outside the pier in the car with another agent.

Q. How long did you remain outside? Approximately what time was it? A. I arrived outside the pier at approximately 8.45 a. m.

Q. And how long did you stay in the car at that place? A. Approximately 15 minutes.

Q. What did you do during that time? A. During that 15 minutes we maintained radio contact with other cars in the area.

(479)

Q. Did you at 9 o'clock see a PM Transfer truck emerge from that pier? A. Yes, sir.

Q. Did you follow that truck? A. Yes, sir.

Q. Did you follow that truck all day? A. Yes, sir.

Q. Did you finally follow it that evening to 74 Carmine Street? A. Yes, sir.

Q. What did you do after you saw the truck leave 74 Carmine Street? A. Shortly after the truck reached 74 Carmine Street I entered the PM Transfer Company office at 74 Carmine Street and spoke with a Mr. Pat Maisiello inside the door.

Q. Did you ask Mr. Maisiello to open up some bonded merchandise? A. Yes, sir, I did.

Q. Did Mr. Maisiello open some bonded merchandise? A. He instructed some of his employees to do so.

Q. Will you look at Government's Exhibits Nos. 27 and 28 for identification.

I ask you, were those the cases opened at (480) 74 Carmine Street? A. Yes, they were.

Q. Were any other cases opened at 74 Carmine Street? A. Yes, sir, there were.

Q. Do you remember the marks on the cases that you opened at 74 Carmine Street in addition to I.H.-74 and 75? A. Yes.

Q. What were they? A. ZL-41, 43 and 44.

Q. What did you see in ZL-41, 43 and 44? A. Tripods.

Q. What did you see in IH-74 and 75? A. Packages of watch movements.

Q. Did Mr. Maisiello give you documents covering shipments IH-74 and 75? A. When I requested them, yes, sir.

Q. Are these the documents Pat Maisiello gave you? A. Those are some of them.

Mr. Jaffe: At this time the Government offers Exhibit 32 in evidence.

Mr. Feinberg: Objection is offered; not binding on the defendant.

(481).

The Court: Same ruling.

(Government's Exhibit 32 for identification received in evidence.)

Q. Did you subsequently return the five cases, including the contents, over to another Customs agent that night? A. Yes, sir. In the PM premises.

Q. Do you know the name of the agent you turned it over to? A. Agent Carl Esposito.

Q. Did you receive the cases back from Agent Esposito later that night? A. Yes, sir, I did.

Q. Did you at any time examine the contents of the cases after they reached the Customs Service offices? A. Our office at 201 Varick Street.

Q. Yes? A. I reexamined all of the cases.

Q. Were the cases photographed in your presence, or the contents photographed in your presence? A. Yes.

Q. The cases and contents were photographed (482) in your presence? A. Yes.

Q. By whom? A. Inspector Anthony O'Donnell.

Q. Were the contents and watch movements examined in your presence? A. Yes, sir.

Q. By whom? A. Examiner Frumess.

Q. Did you turn these cases and contents over to the seizure room? A. If I may, the watch movements, as I am looking now, were turned over to Mr. O'Connell but not in the cartons I see there. I turned over the three wooden cases and eight packages of watch movements.

Q. Do you remember the date you turned these over to Mr. O'Connell? A. Yes, February 1st, 1956.

Mr. Jaffe: No further questions.

* * * *

(548) * * *

PASQUALE MAISIELLO, called as a witness on behalf of the Government, being duly sworn, testified as follows:

The Court: Mr. Maisiello, you have pleaded guilty to this indictment, haven't you?

The Witness: Yes, sir.

The Court: This conspiracy charge in the indictment?

The Witness: Yes.

The Court: All we want you to do here is to tell the full truth about it. You pleaded guilty to it, and we want you to tell the full truth about it, your participation in it and the participation of anyone else about whom counsel asks you. In other words, just tell the whole truth; don't try to protect yourself; don't try to protect anybody. Just tell the truth.

You understand that?

The Witness: Yes, I do.

The Court: Proceed.

Direct examination by Mr. Formon:

Q. Mr. Maisiello, you are still awaiting sentence under this indictment, is that correct? A. Yes.

(549)

Q. Were you formerly connected with P. M. Transfer Company; is that correct? A. Yes.

Q. Do you know Mr. Broker? A. Do I know Mr. Broker?

Q. Yes. A. Yes.

Q. Do you see Mr. Broker in this courtroom? A. Yes.

Q. Would you stand up, please, and point him out? A. Mr. Broker is sitting in front of the desk.

Q. Of this desk (indicating)? A. Yes.

Q. At which end? A. At that end (indicating).

The Court: Let the record show he has identified the defendant Broker.

Q. About when did you first meet Mr. Broker? A. About May of 1954.

Q. Do you know where you first met him? A. I met him at Carmine Street at my place of business.

Q. In the City of New York? A. 74 Carmine Street, New York, the place of my business.

(550)

Q. Who else was present, if anyone? A. Henry Wegner.

Q. Did you have any conversations with Mr. Wegner and Mr. Broker at that time? A. I did.

Q. Will you state what Mr. Broker said, if anything, and what you said, if anything, and what Mr. Wegner said, if anything? A. Well, our conversation was with Mr. Broker and Wegner to a deal there where I should move something for him out of——

Q. State specifically who said what. Did Mr. Broker say— A. Wegner approached me first on it and told me what I was to do in this case here, and he had Mr. Broker up to me to verify the thing, how the thing will be worked out.

Now, when I got the full information from Broker I asked him a question; I said——

The Court: Just a minute. The jury wants to know the full information you got from Broker.

The Witness: I am coming to that.

The Court: What did he tell you?

The Witness: I am coming to that.

(551)

The Court: Okay.

The Witness: (continuing) It was to take a few packages out of a case and put something else into the case.

I asked him the question, I says to him, "How will it come across from Europe?"

He says, "I have got nothing to worry about because in Europe—when the stuff comes in—and that is why you have got to speed it up so I can send my papers back so they will be cleared up and the other merchandise would be in the case."

Q. Did you have any discussion about the type of cases or anything like that at the time? A. Well, he give me a rough idea how the cases would be at the time.

He says, "I have some cases in my place," and he showed me how they would be.

Q. When were you supposed to do what he described? A. He said to list up a board——.

Q. I say, did he tell you when you were supposed to do what he described? A. When?

Q. Yes. A. When a shipment would come in, and (552) I would get my information from Wegner how a shipment would come in.

Q. Did he tell you where you were to get the merchandise to put into the box? A. I would pick up the merchandise from his place.

Q. What would you do with the merchandise or the cartons that your found in the box? A. The merchandise I took out of the case I would bring to his place.

The Court: Wait just a minute.

A Juror: A point of clarification: Whose place is "his place"?

The Witness: Broker's, sir.

The Court: Proceed.

By Mr. Formon:

Q. Do you recall when next you saw Mr. Broker in the presence of Mr. Wegner? A. The next time I seen Mr. Broker was after my first shipment. I had to see him for the reason why the first shipment had come through——

Q. Don't tell us why you had to see him. Was Mr. Wegner present at the time? A. Yes, Mr. Wegner was present at the time.

(553)

Q. And the three of you had a conversation at that time? A. We had a conversation about the first shipment.

Mr. Feinberg: No foundation laid, if your Honor please.

The Court: Time and place.

Q. Do you know about when? A. About June, about the middle part or ending part of June.

Q. Of the same year? A. Of the same year, 1954.

Q. Do you know where it was? A. At 74 Carmine.

Q. At your office? A. At my office.

Q. Was it inside the office or outside? A. It might have been out or in. It was there.

Q. Did you have any conversations at that time with Mr. Wegner and Mr. Broker? A. The conversation I had with them was in reference that the case wasn't big enough for me to put the merchandise he had given me in it.

Q. Which case? A. The case I took stuff out of and put these (554) clocks in. Now, he had given me seven or eight clocks to put in there——

The Court: When you say "he," use names.

A. (continued) Mr. Broker gave me seven or eight clocks to put in, and the only thing I could put in was four clocks, and I told him this wouldn't go because the weight wouldn't correspond and putting four clocks in the stuff I have taken out of it.

Q. Did Mr. Broker say anything to you about that? A. He said he would write to Europe and have it arranged that the cases would be made a little larger.

Q. Did you have any discussion with Mr. Broker before the first shipment that came in in regard to any money? A. I did.

Q. Would you state about when that occurred and who was present? A. That occurred in about the ending of May.

Q. Who was present? A. I was present, Henry Wegner, Mr. Broker, and my brother John.

Q. Where was that? A. At 74 Carmine Street.

(555)

Q. And what was the conversation about, or who said what? A. The conversation was about the brief-up on this shipment a little more and the money end of it.

Q. State specifically who said what about any particular thing? A. Well, we were talking about the case and how it would work out, meaning how I would take the board off and take the merchandise out and put the other

merchandise in and bring the merchandise down to Mr. Broker.

Q. Was there any mention of money? A. Yes, we had agreed upon $350 a case.

Q Who agreed upon it? A. I and Broker.

Q. Agreed that who was to pay whom $350? A. Mr. Broker was to pay me $350 for a shipment.

Q. Then you say the next meeting was about June where your discussed whether or not the cases were large enough for the clocks? A. After the first shipment I had another meeting with Mr. Broker and Mr. Wegner and we discussed about the case.

Q. Can you recall about when or where you next had a meeting with Mr. Broker when Mr. Wegner was present? (556) A. Where it was taken at?

Q. Do you know where? A. It was always in the neighborhood of Carmine Street.

Q. And who was there? A. Wegner, myself and Broker.

Q. And can you recall what that conversation was about?

The Court: When was it? You are talking about the third?

Mr. Formon: No, this is the fourth one.

The Court: When was this one you are talking about now? Was it June, July, August or when?

The Witness: Around July.

The Court: July, 1954?

The Witness: Yes.

The Court: All right, let us proceed.

By Mr. Formon:

Q. And what was the conversation that you had at that time in the presence of or with Mr. Broker and with Mr. Wegner? A. My conversation was about going on with this business of taking the stuff out of cases for him and putting in——

(557)

Q. Was any mention made of any camera at that conversation? A. Well, at the time——

Mr. Feinberg: I object to leading the witness.

The Court: I overrule the objection.

Q. Was any mention made of a camera at the time? A. At the time he told me there will be parts in it, and he didn't state what was in it, but I found out because one package was open; I found out there was cameras in it.

Q. Did Mr. Broker express any satisfaction or dissatisfaction——

The Court: What conversation did you have about cameras at this meeting?

The Witness: He said there will be parts in the case, but when I opened the case I found the cameras in it, I spoke to him about it. I said this would not do in the respect of he had told me one thing, and there was cameras in it.

Q. At this meeting did Mr. Broker express any dissatisfaction with your services? Did he indicate that anything was missing? A. Well, I don't know if that was that meeting or a meeting later on that he told me there

was a camera (558) missing, and I told him that I didn't know anything about it, and he wanted to hold me to the camera, and I told him he could forget everything that we have done.

Q. A camera missing from what, Mr. Maisiello? A. From one of the cases.

Q. One of the cases that you had opened? A. That I had opened up and took the packages out and put clocks into it.

Q. Subsequently did you have another meeting with Mr. Broker at which Mr. Wegner was present? A. With Broker and Wegner after that about that camera.

Q. Do you recall where that was? A. It was in the vicinity of Carmine Street.

Q. And do you recall the approximate date? A. I don't recall the approximate date.

Q. It was after the July conversation? A. Yes.

Q. And what was the conversation on that occasion?

Mr. Feinberg: May we have the time specified?

The Court: How long after the first meeting in July about the camera was this?

The Witness: It would be right after the shipment would come in——

(559)

The Court: How long after that first meeting was that? In other words, was it still in July or was it in August or——

The Witness: Still in July.

The Court: Still in July?

The Witness: Yes.

The Court: July, 1954.

Let us proceed.

By Mr. Formon:

Q. What was the conversation about on that occasion? A. The conversation was about the camera, and I told him if he didn't take my word for it he could just forget about the whole business.

Q. Was there any discussion about insurance? A. Not on that occasion. It was later on about the insurance.

Q. Would you tell us then about the next meeting you had and where it was and your approximate date and who was present? A. At a meeting I had with Mr. Broker and Mr. Wegner—he claimed there was a package missing——

Q. Wait. Where was the meeting? A. The meeting was on Sixth Avenue.

(560)

Q. On Sixth Avenue near what street? A. The area between Spring and Houston—Spring and Carmine.

Q. Can you give an approximate date? A. No.

The Court: Just about when? About the month?

Q. Was it several months after the prior meeting? A. It was quite a few months later on. I mean the date, I don't know; the month I don't recall, but the time was about in the evening around 6:30 or so.

The Court: Would you say it was about October or November, some time in that area of 1954, or was it before that day?

The Witness: It was around that time.

Q. Did you have a conversation with Mr. Broker and Mr. Wegner? A. Yes, we had a conversation. They were telling me about that I had opened a case——

Q. Who told you that? A. Wegner told me first and then that is why I met with Mr. Broker and he told me there was a package missing in one of the cases, and I said I didn't know anything about it; and he says to me, he says, "I am going (561) to put a claim in for the insurance on it."

Q. Would you keep your voice up, Mr. Maisiello? You may have a drink of water. A. Could I? Thank you.

He says to me he is going to put a claim in for insurance on it, and I told him if he put any insurance claim on a thing like that I would not touch anything else for him.

And he said all right, he would forget about it.

And at that time I told him—he accused me of taking a package, and I said, "If I ever took a package I will take the whole case and there is nothing you can say about it."

Q. Was there any discussion of possibly a new way of bringing shipments in at this meeting?

Mr. Feinberg: If the Court please, I will object strenuously to any leading of the witness.

A. I am coming to that.

Q. Would you proceed with the rest of the conversation?

The Court: Proceed with the rest of the conversation.

A. Then we proceeded on the conversation how the next shipment would come in.

(562)

Q. Will you state the conversation? A. The conversation—Broker was telling me he was sending cases through, and I would not have to open the cases, and he would have a board laying over the board, and I would only have to remove the board and put the board onto another case and ship it out for him.

I quite didn't get him fairly, I didn't understand him too well, I didn't understand him, and I went down to see——

Q. Let us not get to that. We will come to that later. Then subsequently after that meeting did you have another meeting with Mr. Broker at 74 Carmine Street? A. I had a meeting with Broker on Carmine Street, talking about this new deal that he had rigged up——

Mr. Feinberg: Objection. No foundation is being laid again.

The Court: How long after this meeting?

The Witness: It was a few weeks after that meeting.

The Court: What month would you place it in, about?

The Witness: I would place it about a month later.

The Court: About November or December, 1954?

(563)

The Witness: No, 1955.

By Mr. Formon:

Q. Could it have been in the year 1955, Mr. Maisiello?

Mr. Feinberg: If the Court please, I must object.

This is constantly going on. They are constantly feeding words and language to the witness. This has been done before, and I think the witness should be allowed to testify.

The Court: It is very difficult to testify over a period of months and years on particular details.

We are trying to help him.

What year are we in?

The Witness: This is the year 1955 I am talking about now.

The Court: You are in the year 1955?

The Witness: Yes.

The Court: This conversation all took place on Sixth Avenue near Carmine Street——

The Witness: That was in the year of 1955.

The Court: 1955?

The Witness: Yes.

The Court: And that was October or November of 1955?

(564)

The Witness: I might be wrong, but as I said before, it could have been October or it could have been September in that year.

The Court: And this meeting you are telling us about now is approximately a month after that meeting?

The Witness: It might have been a month, a few weeks. It was within that space of time.

The Court: Where did you say it was?

The Witness: The meeting after that was at Carmine Street.

The Court: Who was present?

The Witness: Henry Wegner and Mr. Broker.

Pasquale Maisiello—for Government—By the Court

The Court: Tell us what happened. Tell us what Mr. Broker said, what you said and what Mr. Wegner said. Give us the whole conversation.

The Witness: Wegner was more an interpreter at the time. I couldn't understand Mr. Broker too well, and I would ask Henry Wegner to tell me what he meant, and he was talking to me about this case that would come in, and it would have a board over the boards; that I would not have to touch no bands or touch the case.

And I asked him, "What is this—because you are not trusting me or something like that?

He says, "It makes it easier for you."

(565)

So I says, "All right." But when I started thinking about the thing I couldn't get it straight how it would work out, and I went to see Mr. Broker myself.

Q. Before you get to that, prior to that had there come a time when a shipment came in by air? A. Yes.

Q. Do you recall whether or not you had a meeting with Mr. Broker in connection with that air shipment? A. I had a meeting with Mr. Broker on that.

Q. Do you know when, about when? A. At his place.

Q. Who was present? A. Mr. Broker and I.

Q. What took place at that meeting?

Mr. Feinberg: When was this, by the way, and where?

The Court: When was this?

The Witness: This happened about the month of December or January of 1956.

Pasquale Maisiello—for Government—By the Court

The Court: December, 1955, January, 1956?

The Witness: Around that time.

The Court: And it was in Mr. Broker's place. All right, let us proceed.

The Witness: And he told me about watches (566) coming through, and he told me they would be coming in the air shipment; and he asked if I will pick if up and take care of it as usual for him. I told him I would.

And this night I had the case in my place——

By Mr. Formon:

Q. What night? About when was it? Is this still in January, 1956, you are talking about? A. I don't recall if it was January, 1956, or December, 1955; it was in that area.

And he come up to my place and he brought me a package of books.

I says, "What are you going to do?"

He said, "We are going to put the books."

I said, "You can't."

He says, "We will put it in."

I said, "It is so obvious."

He said, "Put them in."

I said, "How am I going to get the weight?"

So he got a scale—bought a scale——

Q. What do you mean by scale? A. A scale to weigh something on in order to correspond with the weight that was on the case.

Q. Where did you get the scale from? (567) A. Mr. Broker got the scale.

Q. Where did he get it from? A. He might have bought

it. He didn't bring it with him. He sent out for it or went out and bought it.

Q. Was it your scale? A. No. I had no scale.

So we weighed it up and it came out to the weight that was on the case and the watches that came out he made a package of and he took it away with him.

And he left me some books.

I said, "What am I going to do with the books?"

He said, "Send them down to my place in the morning."

I did send the books back in the morning.

Q. After that incident which you said was either December, 1955, or January, 1956, did you have a meeting with Mr. Broker after that? A. After that? Yes, I was down to see him at his place.

Q. Can you state approximately when and what do you mean by his place? A. At his—at 97 Nassau Street where he has got his place of business. I went down to——

Q. About how long after the meeting that you just described where you weighed books? (568) A. About a week later.

Q. Will you state what took place at that meeting? A. At that meeting I went down to see him, and if I remember correctly in that I asked him for some money.

Q. Were you alone at that time— A. I asked him for the loan of some money.

Q. Was anyone else present? A. No, just myself.

Q. Subsequently did you have another meeting with Mr. Broker at 97 Nassau Street? A. After that one.

Q. When you were discussing a new method of bringing in shipments you said that you went down to see Mr. Broker about it; that it was not clear; is that correct? A. Oh, that was a shipment there that—I didn't get clear—I was interrupted and I didn't finish.

When I went down to see him——

Q. About when? A. This was before, right after the air shipment.

Q. It was shortly after December or January, 1956? A. Yes; and I asked him just what he meant by this board, and he described it to me with a few cartons that he took and he showed me on the carton how the bands (569) would be and in between the bands this board would be on top that I would have to remove.

Q. What would you do? A. Remove the board—when I would get a shipment in; remove the board off the top of the case and put it onto to the other cases that we had picked up from Foreign Trade Zone for him, and put them on them cases and ship them out.

Q. Now, you have described briefly conversations the way Mr. Broker instructed you to do certain things. Did you, as various shipments arrived, follow Mr. Broker's instructions? A. I followed all his instructions.

Mr. Feinberg: May I have the question read?

(Question and answer read.)

Q. Would you briefly describe what you actually did in one of these operations? A. Well——

The Court: Meaning the first operation or the second?

The Witness: Any one? Any particular one?

The Court: Start with the first one. In other words, what was the first method of operation and how was it physically carried out?

(570)

The Witness: Well, the case would be the case which would come into my place, and I would open

the case up. I would open the case up; I would take the nails out, slide a board and take the contents out, the package that was in it, and in turn I would put clocks into it.

Q. Where had you gotten the clocks? A. A. I would pick up the clocks from Mr. Broker's place of business, and then when I would put the clocks out I would take the package out and put them in cartons, and I would deliver the cartons to him with the packages that was in the case originally.

Q. And what would you do with the case after you had put the clocks in? A. Then I would ship the case out.

Q. About how many shipments would you say you had handled this way? A. I would say about 8 to 10 shipments.

Q. How many cases were there in each shipment here, generally speaking? A. Generally there was one case. A few times there was two cases.

Q. Did you ever receive any money from Mr. Broker? A. I did.

(571)

Q. What for? A. For switching merchandise from one case and putting clocks into it.

Q. Did you have any arrangement with Mr. Broker as to the amount of money you would get? A. $350 a case.

Q. Did you personally receive the money on any occasion from Mr. Broker? A. I would—when I had time I would go down and see him, and other times I would have my brother pick it up for me.

Q. Go down to see him where? A. At his place of business at 97 Nassau Street.

Q. Mr. Maisiello, would you step down from the stand

and look at Government's Exhibits 37 and 38 for identification, two cases? A. (Stepping down from witness stand) This case——

Q. Have you ever seen these cases? A. I have seen them cases.

Q. Where did you see them the first time? A. The first time I seen those cases——

The Court: Turn around and face the jury.

A. (Continued) The first time I seen these cases was in Hoboken pier, 46th Street in Hoboken.

(572)

Q. Can you fix an approximate date? Was it in the first, second or third——

The Court: Just a second. Let him give an approximate date, if he can.

A. Well, this was the year of 1954. The approximate date I don't recall, or the month.

Q. You saw it in Hoboken? A. Yes.

Q. Would you go on then? A. When I seen the case at Hoboken and I looked at the cases, and the case was apparently opened by someone, and I called up Henry Wegner to call up Broker and tell him that I would not handle the stuff.

Q. Were those the cases you were supposed to pick up? A. Two cases, yes.

And Henry Wegner says to me, "What are you going to do?"

I said, "I am going to leave the cases there."

And he said, "All right, I will see you tonight."

He got in touch with Mr. Broker, and we had a discussion on it, and they told me they were going to send the cases back to Europe and they were going to come back repacked in new cases.

The shipment came back a few months later into New (572a) York, and when it was picked up by one of my drivers, I had the case in my place, and I looked at it, and I said, "You send the cases back and I don't want to do anything with it."

Q. Whom did you call up? A. Henry Wegner.

(573)

The Court: What did you do?

The Witness: I called up Henry Wegner, and Henry Wegner was supposed to get in touch with Mr. Broker, and when we got together again, Henry Wegner looked at the cases, and I showed him what was what. There was a hole in one of them and the boards was loose on them.

Q. Was there anything on the markings on the case? A. The markings I don't recall, but I remember the cases.

Q. Was there anything wrong with the markings?

Mr. Feinberg: Objection, if the Court please.

The Court: Rephrase your question.

Mr. Feinberg: He is cross-examining his own witness.

A. They come in in different marks, if that is what you are asking.

Q. They were the same cases— A. The same cases with different marks.

Q. Can you tell if the old marks are still on those cases? A. I can.

Q. And are they? (574) A. They are.

Q. Would you point out to the jury whereabouts the old marks are?. A. The old marks are on the top here on this case here (indicating).

Q. Where are the new marks? A. The other one, at the bottom, the AZ.

Mr. Formon: I have no further questions—oh, just one more question:

Q. Mr. Maisiello, did you make any statement to the Customs agents in connection with this matter? A. I did.

Q. Was that statement completely truthful? A. Truthful.

Q. The statement you gave to the Customs agent? A. Well, I gave two statements—I mean—excuse me, I am sorry—the first statement I gave wasn't truthful.

Mr. Formon: I see.

Mr. Feinberg In view of the last, may I respectfully ask the Court to request the Government to——

Mr. Jaffe: The Government is giving it to him without any objection.

* * * *

(625) * * *

JOHN MAISIELLO, called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct examination by Mr. Jaffe:

Q. Mr. Maisiello, are you awaiting sentence in this case? A. That is correct, sir.

Q. Were you promised anything for testifying here today? A. No.

Q. Do you hope to get anything for testifying here (626) today? A. Just let the Court know that I co-operated.

Q. Do you know a man named Moritz Broker? A. Yes, I do.

Q. Do you see him in court? A. Yes, he is right there (indicating).

Mr. Jaffe: Let the record indicate that he has identified Moritz Broker.

Q. Have you ever met Mr. Broker before? A. Yes, I have.

Q. When was the first time you met Mr. Broker? A. I would say in the latter part of May, 1954.

Q. And where did this meeting take place? A. At 74 Carmine Street.

Q. About what time of the day? A. I would say it was in the evening after six o'clock.

Q. Was any conversation held? A. There was.

Q. Will you tell us what was said? A. Well, it was discussed——

The Court: Just say what he said; what you said, what anybody said.

A. There was four of us that met: Moritz Broker, (627) Henry Wegner, Pat Maisiello and myself, John Maisiello. Moritz Broker was trying to discuss with Pat how to work the switching of the cases, and Pat couldn't understand him very well, and Henry Wegner had to interpret part of the conversation to him. After that was discussed, price was discussed, and Mr. Moritz Broker offered $250 and later on it was agreed to $350——

Mr. Feinberg: Objection, if the Court pleases.

Q. Just tell us what was said about price, if you can remember. A. Moritz Broker had offered $250 for the switching.

Mr. Feinberg: Can't we have what he said?

The Court: Try to give us the conversation. Did he say, "I will pay you the $250?" Just say what he said to the best of your recollection.

The Witness: He said, "If you switch these cases for us, take the stuff out of the cases and put these clocks in," Moritz Broker said, "I will give you $250 a case." It wasn't agreeable and it was discussed between Pat and myself——

Mr. Feinberg: Objection.

Q. Did you and your brother have a conversation on the side? A. Yes.

(628)

Q. What happened at that conversation? A. In that conversation we discussed that it wasn't worthwhile to

do it for that price, for $250, and Pat and I come back with a price of $350, and it was accepted by Moritz Broker immediately.

Q. Have you ever received any money from Moritz Broker? A. Yes, sir, I have down at his place of business at 97 Nassau Street.

Q. For what purposes have you received money from Mr. Broker? A. For the switching of the merchandise that was in the cases and putting clocks in the cases.

Q. Have you ever received money for any other purpose from Moritz Broker? A. There was a loan made from Moritz Broker. The amount was roughly about $2,000, which was repaid back, and we gave him a check for it, which he never deposited.

Q. Approximately how many times have you been to 97 Nassau Street? A. I would say anywhere from 8 to 10 times.

Q. Have you been there with Henry Wegner? A. Yes, I met Henry Wegner there I believe two mornings.

(629)

Q. Have you ever paid Henry Wegner any money that you received from Moritz Broker or that Pat Maisiello received from Moritz Broker? A. Yes, I have.

Q. Do you know approximately how much money you paid Henry Wegner? A. He was to get $100 a case, and then it was cut down to $50 a case.

Q. Aside from coming to my office and telling me about your participation in the conspiracy, at any other time have you ever given a statement to the Customs service? A. No, I haven't.

Mr. Jaffe: No further questions.

* * * *

(655) * * *

ANTHONY J. DRAGO, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Formon:

Q. Mr. Drago, how are you employed? A. I am a criminal investigator in the Alcohol and Tobacco Tax Division of the Internal Revenue Service, United States Treasury Department.

Q. Do you have any special qualifications or duties in that Service? A. Yes. I am at present assigned as Chief of the Identification Unit as a fingerprint technician.

Q. Would you state whatever experience or training you have had in fingerprint identification work? A. Well, since 1945 I have studied authorities in connection with fingerprint work and have made practical applications of those studies. I have given training to investigative personnel in connection with fingerprints, and I have done classification, comparison (656) and identification work in all phases of fingerprints.

Q. Do you have any fingerprint work in your position with the Alcohol and Tobacco Tax Unit? A. Yes, in my office I maintain and supervise a fingerprint file which consists of approximately 70,000 fingerprint cards and about 250,000 single fingerprint cards.

Q. Would you please step down from the stand and look at this case marked MS 48, Government's Exhibit 36, please. A. Yes. (Witness steps down.) Yes, sir.

Q. Have you seen that case before, Mr. Drago? A. Yes, sir.

Q. Would you go back to the witness stand now. A. Yes. (Resuming stand.)

Q. Where and about when did you see Government's

Exhibit 36 before? A. I saw that case in the office of the United States Customs at 201 Varick Street. I believe it was Room 433.

Q. About when? A. On July 3rd.

Q. Was anyone present with you at that time? A. Yes, Mr. McVeigh.

(657)

Q. Customs Agent McVeigh? A. Yes, he took me there in fact from my office.

Q. Did you do anything to the case marked Government's Exhibit 36 at that time? A. I was present when Mr. McVeigh opened it.

Q. What condition was the case in before it was opened in your presence? A. It was nailed and there was a metal strap around the one side of the case.

Q. After the case was opened, did you do anything with it or its contents? A. Yes, Mr. McVeigh and I removed seven cartons similar to the one that is on that table, which is about 1 x 1 x 2.

Q. I show you Government's Exhibit 41 for identification and ask you if that is the box that you have reference to (handing). A. Yes, this is one of the seven boxes that were contained in the wooden crate.

Q. Did you do anything else besides pick the boxes out? A. Yes, I opened each of those boxes and made a fingerprint examination of the contents, which were clocks containing a glass dome on each one.

(658)

Q. In the boxes similar to Government's Exhibit 41 for identification, you found clocks? A. Yes, sir.

Q. And did you find any fingerprints on any of the

clocks? A. I found some fragmentary impressions which were not favorable for comparison purposes. However I did find one latent print on one of the glass domes, which I have contained in that box at the present time.

Q. You refer to Government's Exhibit 41 for identification? A. Right, and I processed it to bring out the impression and examine it, and then took that glass dome to my office for further examination and work.

Q. Would you please remove the glass dome. A. Incidentally, these cardboard bracings are the original bracings that were in the carton at the time that I removed the clocks from these cartons.

Mr. Formon: May the glass dome be marked Government's Exhibit 42 for identification.

(Marked Government's Exhibit 42 for identification.)

Q. What did you do with the glass dome marked (659 Government's Exhibit 42 for identification? A. I examined the latent print that I developed on it and compared it with known prints, and I did make an identification.

Q. I show you Government's Exhibit 39 and ask you if you have seen that before (handing). A. Yes, sir, this was brought to me by Mr. McVeigh, to my office on I believe it was July 5th or the morning of July 6th. I am not sure about the time.

Q. Did you make a comparison of the print you found on the globe, Government's Exhibit 42 for identification and the fingerprint on Government's Exhibit 39? A. I did.

Anthony J. Drago—for Government—Direct

Q. What was the result? A. And I found that the latent print that is impressed upon that glass globe is the same as the left thumbprint that is on that card.

Mr. Formon: The Government has no further questions.

* * * *

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(694)

Amnon Aizensztadt, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Formon:

Q. Mr. Aizensztadt, where do you reside? A. In Toronto, Canada.

Q. What business are you in? A. I am a tile contractor.

Q. Are you self-employed? A. Yes.

Q. What is the name of your company? A. State Tile Company.

Q. And where is your business? A. At my home, 630 Brock Avenue.

Q. Toronto? A. Yes.

Q. Do you know a person by the name of Moses Brukirer? A. Yes, I do.

Q. Will you look in the courtroom and see whether or not you see Moses Brukirer in the courtroom? A. Yes, I do.

Q. Would you point him out, please? A. It is at the green table, the man to the right (indicating).

(695)

Mr. Formon: May the record show the witness has identified the defendant.

Q. From where do you know him? A. I know him from the old country, from Poland.

Q. Did you know his family in Poland? A. Yes, I did.

Q. Do you know whether or not he has any brothers? A. I heard that he has brothers, that they are alive.

Q. Did you know in Poland his brothers? A. Yes, I did.

Q. Do you know what their names were. A. Yes.

Q. What were their names? A. One Pineus and the other one Shloma.

Q. Did you meet Mr. Broker in this country? A. Yes, I met him once in this country. I found out that he is in New York.

Q. Would you explain to the jury the circumstances of your meeting with Mr. Brukirer? A. About two years ago——

The Court: Is Brukirer and Broker the same name?

(696)

Mr. Forman: Maybe if I ask him——

Q. Do you know the defendant, Mr. Brukirer, whom you have identified as Mr. Broker? Have you ever heard him called Mr. Broker?

Mr. Feinberg: I think until we establish something—the defendant's name originally was Moses

Brukirer. He assumed the name of Broker in this country, but your use of the name Brukirer—if the witness will so testify, I won't interrupt, but I think that you should clarify what his name was.

The Court: Let us see if we can get the name straight.

Q. By what name did you know the man you have identified in the courtroom in Poland? A. Moses Brukirer.

Q. How did you know him? What was your relationship; in business, in social, religious or what? A. I would say religious. My father was a rabbi and his father was a follower of my father. So that is how we come together. He used to come to us to pray. He belonged to the congregation.

Q. And you refer to the man in the courtroom as Moses Brukirer? A. That is right.

(697)

Q. Did you ever know that he was called or used the name Moritz Broker? A. When I came to New York about two years ago, I found out that he is in New York through friends, and I called him up and he asked me to come over, which I appreciated very much to see him because I had a sentiment from before the war, and when I went there I am not sure, but I think in a card or something I saw that he is Broker. I think I asked Mr. Brukirer and he explained to me it is very hard for English customers or people to say Brukirer, and it is shorter for them to say Broker.

Q. Do you recall about when that conversation took

place? A. That was in 1954, around the end of 1954, around two years ago.

Q. And where did it take place? A. In his store on Nassau Street.

Q. Will you tell us the rest of the conversation you had at that time, if there was any further conversation? A. The rest was a casual conversation, "How are you? How are we?" We didn't see each other for a long time; that I got married and he got married, and I (698) saw that he is in business, he has a nice store. He asked me what I am going. I told him I did start up not long ago like a tile setter, and we talked about friends, and then he asked me how my materials are, and I told him that I am starting up. So he says that he can help me out, he is importing clocks from Germany, and he can give me the clocks at cost price, he doesn't want to make any money on it, and he will send it to me to Canada and I should work with my wife or me, if we have friends we can sell it to them and make extra money on it.

Q. Did he state how much the clocks would cost? A. He says he doesn't want to make any money on it. He does it like a favor, and it will cost only a few dollars, $3 to $4.

Q. Did you ask him any further questions about it? A. I asked half serious if it is kosher. He says, "Don't worry"—I mean if it is legal, if it is no stolen goods or things like that—so he told me that I am talking silly, it is legal everything, and I don't have to worry nothing about it. I will get it through the Customs in Canada, everything is going to be checked, and I will have to pay everything (699) in Canada up when I get it.

Amnon Aizensztadt—for Government—Direct

Q. Did you have any conversation with Mr. Brukirer or Mr. Broker after that date, whether by telephone or in person? A. It is a long time ago. I can't recall exactly, but I think two times he phoned. Once he phoned and I wasn't home, and I think once he phoned and he said the clocks——

The Court: Just a minute, let us get the time and place.

Q. To where were the telephone calls and about when? A. That I know for sure it was after my being in New York, later.

Q. About how long, about how many weeks later—a month later? A. I can't describe too exactly, but it was probably a few weeks later.

Q. Where were you when you received the telephone calls? A. I think once I was at home and once I was at work. My wife received the telephone call, and I wasn't home.

Q. You received one telephone call at your (700) home? A. Yes.

Q. And what was that conversation about? A. That I am going to get the clocks, shipping out clocks.

Q. What happened after that in connection with the shipment of clocks? What was the next thing that happened? A. The next thing I don't know exactly—I think I got a letter from the Customs that I have packages to pick up, clocks, and I give it to a broker.

Q. What was the name of the broker? A. I think Kuhne & Nagel.

Q. Did you hear anything from Kuhne & Nagel? A. It

took quite a time because he said there is a lot of formalities and form and is not completed, and finally I got the clocks after paying up $300 with expenses, with $40, and I got the clocks delivered to my place.

Q. Do you know what that $340 was for? A. I can't tell you that because I am not in the importing business. I didn't check everything saparately what is what for, but I know that all together with the delivery it was about $340 some-odd.

(701)

Q. How many cases did you get for the $340? A. I got three cases.

Q. And how many clocks were in the three cases? A. 21.

Q. Would you step down from the stand a minute and look at these two cases marked Government's Exhibits 37 and 38 for identification and state whether or not you recognize them (indicating). A. I can't say exactly that those are the cases, but cases like this, approximately this size, I gave to Mr. Walsh.

Q. Are those the cases that were delivered to you from Kuhne & Nagle? A. I don't know if it was exactly, but this size cases I gave to Mr. Walsh, three cases.

Q. Would you briefly describe the clocks that were contained in the cases? A. They are called 400-day clocks. You turn them once and they go 400 days, with a glass cover on the top.

Q. A glass-domed clock? A. With a glass cover on the top.

Q. I show you Government's Exhibit 42 for (702) iden-

tification and ask you if this is the type of a glass dome that was on the top of the clock (handling). A. That is right.

Q. Did you hear anything more about shipments of clocks after you received these two shipments? A. I can't remember exactly from where, but I got once a letter, I don't know, from the Customs or from somebody else or from a broker—I didn't pay any attention to it—that there are more clocks shipped for me, but I didn't bother to pick them up any more.

Q. You didn't pick up the shipment? A. No.

Q. Do you know where the shipment was? A. Where it was?

Q. Yes. A. I can't tell you, maybe in Toronto. I don't know where.

Q. Did you have any further conversations, either by telephone or in person, with the person you know as Mr. Moses Brukirer? A. I think I had one conversation more.

Q. Was that on the telephone? (703) A. I think so. I am not sure, but I think so.

Q. Do you know where you were when you received it? A. It must be at home.

Q. Do you know about when? A. I can't tell you the time exactly.

Q. Can you state what the conversation was? A. Mr. Brukirer says that he is going to come over to Toronto, and we didn't talk about particular things, but he says he is going to come over to Toronto, and I felt like he wanted to stay in my place or something like that, or that he wanted to get to Toronto to continue the friendship like before the war.

Q. And what did you say?

Amnon Aizenstadt—for Government—By the Court

Mr. Feinberg: I don't see the pertinence.

Mr. Formon: It is a conversation with the defendant.

The Court: Is it relevant to this case?

Mr. Formon: Well, yes. I want the whole telephone conversation.

The Court: I understand. We only want the relevant parts.

Mr. Feinberg: The witness has not testified it was a telephone conversation. He said he didn't (704) know.

The Court: This conversation you are telling us about when you thought he wanted to come up to stay with you, renew your friendship, did you say that was a telephone conversation?

The Witness: Yes.

The Court: You did say so. I think you said you were in Toronto at the time?

The Witness: It was in Toronto.

The Court: Now, how long after the first shipment of clocks was this conversation?

The Witness: I don't know the date exactly.

The Court: Was it one week, two days or three months, three weeks approximately? Just give us your best recollection.

The Witness: After I got the clocks?

The Court: Yes, the first shipment you got.

The Witness: I would say it was a few weeks later.

The Court: By few you mean four or five?

The Witness: Three, maybe four weeks.

The Court: Let us proceed.

Mr. Formon: I will withdraw the question about the telephone conversation.

(705)

Q. I show you Government's Exhibit 9 in evidence, two checks made out to A. Aizensztadt, one in the amount of $50 and one in the amount of $250, and ask you if that is your signature on the back of them (handing). A. Yes, it is.

Q. Did you receive those checks? A. Yes, I did.

Q. And did you cash them? A. Yes, I did.

Q. How did you receive them? A. I received them by mail.

Q. Did you know from where they came? A. It was signed Mr. Brukirer.

Q. Was there any letter with them? A. No, nothing.

Q. Did you, subsequent to the last telephone call with Mr. Brukirer, receive a visit from a Customs agent by the name of Walsh? A. Yes, I did.

Q. And what did Mr. Walsh do when he came to your place? A. He asked me if I know a Mr. Brukirer or Broker. I don't know exactly, but he told me Moritz Broker from New York.

(706)

Q. Did you give Mr. Walsh anything?

Mr. Feinberg: Objection, if the Court pleases. It is not binding on the defendant and subsequent to the period of the seizure.

The Court: I think the question is whether or not he gave the agent anything. I will overrule the objection.

Q. Did you give the Customs agent Walsh anything? A. Yes, I gave him the three cases in which the clocks were packed.

Q. After your examination of the two cases in the courtroom, Government's Exhibits 37 and 38 for identification, can you state whether they were the same type cases (handing)?

Mr. Feinberg: Objection. It has already been asked and answered. The witness has testified they were about the same but he doesn't know whether these are the cases.

The Court: Yes, let us proceed.

Q. Are these the cases?

The Court: The witness has already testified those were the same type cases he received and the same type he gave to the agent Walsh.

Q. Do you know a man by the name of Henry Wegner? (707) A. No, I don't.

Q. Do you know a man by the name of John Maisiello? A. No, I don't.

Q. Do you know a man by the name of Pasquale Maisiello? A. I don't.

Q. Did you ever hear of P. M. Transfer Company? A. I didn't. Maybe it was shipped to them, but I don't know nothing about them.

Amnon Aizenstadt—for Government—Direct.

Q. Do you know Alltransport Company? A. Maybe it was shipped through them, but I don't know them.

Q. Did you have any business dealings or do you know a man by the name of Hans Schmid? A. No, I don't know him.

Q. Did you ever have any business transactions since you left the old country with Mr. Brukirer, any Mr. Brukirer? A. No, I didn't.

Q. Do you know where Shloma Brukirer is or has been for the past few years? A. I don't know exactly, but I heard he is in Germany.

(708)

Mr. Formon: I have no further questions.

* * * *

Government's Exhibit 8

Record of Alltransport, Inc., covering an in bond shipment of 2 cases of table clocks from Munich, Germany, to Chicago.

(OFFSET)

[*For convenience of Court and Counsel this Exhibit is bound in on the opposite page.*]

LAHNSTEIN

IN BOND

PERMIT TO OFFICE

IMPORT Nº 6777

Date 10/11/54

CONSIGNEE

at disposal of Hans Schmid
Munich, Germany

10

AGENT: Hans Schmid, Munich Sch/S
throu Schulze and Co. Bremen

ACTUAL SHIPPER:

S/S Lahnstein ARR/DUE 10/18/54 DOCKED PIER: 17th St. Bklyn B/L NO.: 81 Bremen pp

Marks and Numbers	Nos. of packages	Contents	Gross Weight
A Z 42/3	2 cases	table clocks	280 #

IN BOND TO CHICAGO.

value 160 -

Please mail us PROMPTLY:

NOTICE TO IMPORTER

☒ Consular Invoice ☐ Comm. Invoice ☐ Original Bs/Lading ☐ Delivery instructions

☐ Please telephone to our Mr. ..... regarding the clearance thru Customs.

SUBMISSION OF INVOICE — IMPORTANT — PLEASE READ

On merchandise subject to AD VALOREM duty it is necessary that you send us all documents, copies of orders etc. relative to this importation so that same may be submitted to the Customs Appraisers for the purpose of ascertaining the proper value for duty purposes. Papers will be returned to you after perusal.

8M Sets-7-53-P &G—6006

CUSTOMS DIVISION

ENTRY NO.

P/S

C | F | WH

IMPORT DIVISION

OCT 11 1954

Baltimore + Boston Chicago

INVOICE SUBMITTED		TRANSFER TO:
" RESUBMITTED		REMARKS:
CURRENCY SHEET MAILED		
" RECEIVED AND FILED		
PERMIT SENT TO PIER.		
BY REGULAR MESSENGER		
BY SPECIAL "		

IT | T&E | APPR SO

PM to Lefrahuls F.F

(Coe Wagner)

HENRY WEGNER

Government's Exhibit 8

ALLTRANSPORT INCORPORATED

6 STATE STREET • NEW YORK 4, N. Y.

OUR REF. 6787

DELIVERY INSTRUCTIONS

DATE 10/21/54

PICK UP FROM:

SS Lahnstein 10/19/54
Pier 17th St. Brooklyn

B/L 81 Bremen

DELIVER TO:

Lifschultz Fast Freight Inc.
Pier 64 NR.

THRU: P M Transfer Co. LATEST

MARKS	NUMBERS	PACKAGES	CONTENTS	WEIGHT/LBS.
A Z	42/3 IN BOND	2 cases	table clocks OCT 25 1954	280 #

ENTRY No. NOS. OF P. S. PACKAGES

IMPORTANT: Packages must bear marks and numbers shown on these instructions.

1268824

RECEIVED IN GOOD CONDITION

DATE

F. M. B. Registration No. 315

54-P & G—7861

Government's Exhibit 8A

PERSONAL MONEY ORDER — PERSONAL MONEY ORDER

No. 239211

THE
NATIONAL CITY BANK
OF NEW YORK

2

1-8
210

NEW YORK, N. Y. FEB 16 1955

PAY TO THE ORDER OF A. AIZENSTADT

N.C.B. 38 N.Y. $50 AND 00 CTS

M. Brokers
SIGNATURE

15 AMBOY ST B'KLYN NY
ADDRESS

REGISTER CHECK

PERSONAL MONEY ORDER — PERSONAL MONEY ORDER

PERSONAL MONEY ORDER — PERSONAL MONEY ORDER

No. 239210

THE
NATIONAL CITY BANK
OF NEW YORK

2

1-8
210

NEW YORK, N. Y. Feb 16 1955

PAY TO THE ORDER OF A. AIZENSTADT

N.C.B. 38 N.Y. $25 AND 00 CTS

M Brokers
SIGNATURE

15 AMBOY ST B'KLYN NY
ADDRESS

REGISTER CHECK

PERSONAL MONEY ORDER — PERSONAL MONEY ORDER

Government Exhibit 9

Government's Exhibit 8A

Delivery instructions by Allrail-port, Inc., to P. M. Transfer Co. covering shipment of clocks from Munich, Germany.

(OFFSET)

[For convenience of Court and Counsel this Exhibit is duplicated on the opposite page.]

Government's Exhibit 9

Checks dated February 16, 1955 signed by M. Broker, payable to A. Aizensztadt.

(OFFSET)

[For convenience of Court and Counsel this Exhibit is bound in on the opposite page.]

Government's Exhibit 11

Record of Alltransport, Inc. covering an in bond shipment of 2 cases of clocks bearing the marks MS 48, 49, from Munich, Germany to State Tile Company, Toronto, Canada.

(OFFSET)

[For convenience of Court and Counsel this Exhibit is bound in on the opposite page.]

Kuhne advised shipment not taken
20 pieces received

IN BOND
PERMIT TO OFFICE

IMPORT Nº 9390

AMERICAN SCOUT

Date 2/18/55

CONSIGNEE

State Tile Co.
630 Brock Avenue
Toronto, Canada

3c In 10:30 AM

AGENT: Hans Schmid, Munich, 5119

ACTUAL SHIPPER: Schmid

S/S American Scout ARR/DUE 2/23/55 DOCKED PIER: 59 N.R. B/L NO.: 21 Bremer

Marks and Numbers	Nos. of packages	Contents	Gross-Weight
M S 48/49 IN BOND	2 cases	clocks	220#

IN BOND TO CANADA, KUHNE AND NAGEL LTD. Toronto.

NOTICE TO IMPORTER

Please mail us PROMPTLY: → ☐ Consular Invoice ☐ Comm. Invoice ☐ Original Bs/Lading ☐ Delivery Instructions

IMPORTANT: ☛ Please contact our Mr. .....regarding the clearance thru Customs.

10M Sets-11-54-P & G—8026

CUSTOMS DIVISION

ENTRY NO.
P/S

C | F | WH IMPORT DIVISION

FEB 17 1955

K+N Ltd
TORONTO CANADA

INVOICE SUBMITTED		TRANSFER TO:
" RESUBMITTED		REMARKS:
CURRENCY SHEET MAILED		
" RECEIVED AND FILED		
PERMIT SENT TO PIER.		
BY REGULAR MESSENGER		
BY SPECIAL "		

IT | T&E | APPR 90

P/U to Marsden Bros

BILLED MAR - 1 1955

ARTHUR WEGNER

Government's Exhibit 11

Phone: WHitehall 3-0230
(20 Lines)

ALLTRANSPORT INCORPORATED

6 STATE STREET • NEW YORK 4, N. Y.

OUR REF. 9390

DELIVERY INSTRUCTIONS

DATE 2/23/55

PICK UP FROM:

Pier 59 NR
SS American Scout

B/L 21 Bremen

DELIVER TO:

Kuhne and Nagel Ltd.
19 Melinda St.
Toronton, Canada

P M to Maislin Brothers

THRU: LATEST

MARKS	NUMBERS	PACKAGES	CONTENTS	WEIGHT/LBS.
M S IN BOND	48/9	2 cs	clocks	220#
	I N B O N D	, permit and manifest attached.	FEB 28 1955	

ENTRY No. NOS. OF P. S. PACKAGES

IMPORTANT: Packages must bear marks and numbers shown on these instructions.

2/V

RECEIVED IN GOOD CONDITION

DATE

Government's Exhibit 11A

American Traveler

IMPORT Nº 9589

Date 3/2/55 WO 42476

CONSIGNEE
Embrohs Trading Corporation
15 Amboy Street,
Brooklyn, NY

AGENT: K & N Bremen
01-171/3013

ACTUAL SHIPPER: S. Brukirer

S/S Am. Traveler ARR/DUE 3/9/55 DOCKED PIER: 86 V 1 B/L NO. Bremen 35

Marks and Numbers	Nos. of packages	Contents	Gross Weight
SUSIS 689/694 S 1-6	Six cases	Tripods.	941 lbs.

NOTICE TO IMPORTER

Please mail us PROMPTLY: → ☐ Consular Invoice ☐ Comm. Invoice ☐ Original Bs/Lading ☒ Delivery Instructions

HENRY WEGNER

IMPORTANT: ☞ Please contact our Mr. .....regarding the clearance thru Customs.

10M Sets-11-54-P & G--8226

CUSTOMS DIVISION

ENTRY NO.
P/S

C | F | WH
MAR 2 1955
IMPORT DIVISION
FT2

INVOICE SUBMITTED
" RESUBMITTED
CURRENCY SHEET MAILED
" RECEIVED AND FILED
PERMIT SENT TO PIER.
BY REGULAR MESSENGER
BY SPECIAL "

TRANSFER TO:
REMARKS:

IT | T&E | APPR SO

PM to FT2
get examination order

MAR 23 1955

BILLED
MAR - 1 1955 pilled mke FT2

HENRY WEGNER

Government's Exhibit 12

Government's Exhibit 11A

Delivery instructions by Alltransport, Inc. to P. M. Transfer Co. covering shipment of clocks from Munich, Germany.

(OFFSET)

[For convenience of Court and Counsel this Exhibit is bound in on the opposite page.]

Government's Exhibit 12

Record of Alltransport, Inc. covering an in bond shipment of 6 cases of tripods from S. Brukirer to Embrohs Trading Company, Brooklyn, New York.

(OFFSET)

[*For convenience of Court and Counsel this Exhibit is bound in on the opposite page.*]

Government's Exhibit 18

Record of Alltransport, Inc. covering an in bond shipment of 4 cases of tripods from S. Brukirer to Semrhib Trading Co., Newark, New Jersey, bearing the marks ZL 41-44.

(OFFSET)

[For convenience of Court and Counsel this Exhibit is bound in on the opposite page.]

IMPORT Nº 15864

MOSELSTEIN

Date 12/13/55

CONSIGNEE

SEMRHIB TRADIN : CO
972 Broad St.
Newark, N.J.

15

AGENT: HansStenkel

ACTUAL SHIPPER: S.Brukirer, Munich

S/S Moselstein | ARR/DUE 12/14/55 | DOCKED PIER: 17th St, Bklyn | BA NO.: 14 Bremen

Marks and Numbers	Nos. of packages	Contents	Gross Weight pp
Z L 41/44	4 cases	camera stands, tripods	340#

NOTICE TO IMPORTER

Please mail us PROMPTLY: → ☐ Consular Invoice ☐ Comm. Invoice ☐ Original Bs/Lading ☐ Delivery Instructions

IMPORTANT: Please contact our Mr. ..... regarding the clearance thru Customs.

10M Serv-11-54-P & G—8226

CUSTOMS DIVISION

ENTRY NO.

P/S

INVOICE SUBMITTED

" RESUBMITTED

CURRENCY SHEET MAILED

" RECEIVED AND FILED

PERMIT SENT TO PIER.

BY REGULAR MESSENGER

BY SPECIAL "

BILLED DEC 21 1955

JENDY WEGNER

IMPORT DIVISION

TRANSFER TO: Embroker Trading FTZ value $ 600-

REMARKS: J Hassan contents 210 lmport

PM 6 FTZ

store in name of Semchib Trading

gd examination papers and give to Wegner

not yet

Government's Exhibit 18

Please 24 (1)

4648

Phone: WHitehall 3-0230
(20 Lines)

ALLTRANSPORT INCORPORATED

6 STATE STREET • NEW YORK 4, N. Y.

DEC 20 1955

OUR REF. 15864 PAW

DELIVERY INSTRUCTIONS

DATE 12/15/55

PICK UP FROM:

PIER FT 17TH ST BKLYN
SS MOSELSTEIN 12/15/55

B/L 14 BREMEN

DELIVER TO:

FOREIGN TRADE ZONE

FOR ACCOUNT OF SEMRHI B TRADING
972 BROADWST
NEWARK NJ

THRU: PM TRANSFER

LATEST

MARKS	NUMBERS	PACKAGES	CONTENTS	WEIGHT/LBS.
Z L 41/44	ALLTRANSPORT	4 CASES	CAMERA TRIPODS	339

ENTRY No.

NOS. OF P. S. PACKAGES

IMPORTANT: Packages must bear marks and numbers shown on these instructions.

RECEIVED IN GOOD CONDITION

DATE

The Company acting only as agents for their principals assume no liability whatsoever and undertake to use reasonable care in the selection of carriers, truckmen, forwarders, custom brokers and others to whom the shipment may be entrusted for transportation, packing, handling, custom clearance, storage, delivery or otherwise.

Form 18-Rev.-5M Sels-5-55-P & G-8962

Government's Exhibit 18A

Government's Exhibit 18A

Delivery instructions by Alltransport, Inc. to P. M. Transfer covering shipment of tripods from S. Brukirer to Semrhib Trading Co.

(OFFSET)

[For convenience of Court and Counsel this Exhibit is bound in on the opposite page.]

IMPORT N? 16575

BLACK FALCON

Date 1/13/56

CONSIGNEE

Kuhne and Nagel
19 Melinda St.
Toronto, Canada

at disposal of Brukirer

AGENT: Stengel Bremen

ACTUAL SHIPPER: S.Brukirer Munich.

S/S BLACK FALCON ARR/DUE 1/21/56 DOCKED PIER: Smith St.BKLYN B/L NO.: 6 Bre pp

Marks and Numbers	Nos. of packages	Contents	Gross-Weight
I H 74/5	2 cases	tripods	165#

NOTICE TO IMPORTER

Please mail us PROMPTLY: → ☐ Consular Invoice ☐ Comm. Invoice ☐ Original Bs/Lading ☐ Delivery Instructions

IMPORTANT: ☛ Please contact our Mr. .....regarding the clearance thru Customs.

10M Sets-11-54-P & G—8226

C | F | WH

KHN Ltd

JAN 13 1956 IMPORT DIVISION

Toronto Canada

APPR SO

CUSTOMS DIVISION

ENTRY NO.

P/S

INVOICE SUBMITTED

" RESUBMITTED

CURRENCY SHEET MAILED

" RECEIVED AND FILED

PERMIT SENT TO PIER.

BY REGULAR MESSENGER

BY SPECIAL "

TRANSFER TO:

REMARKS:

PM to Maistlin Bros ~~Stamford~~

prepaid

write Kyn -

Government's Exhibit 19

Government's Exhibit 24

Application to admit merchandise into Foreign Trade Zone, covering 4 cases of tripods, bearing the marks ZL 41-44.

(OFFSET)

[*For convenience of Court and Counsel this Exhibit is bound in on the opposite page.*]

Government's Exhibit 24

FOREIGN-TRADE ZONES BOARD
TREASURY DEPARTMENT
400.830, BOARD REGULATIONS
30.5, CUSTOMS REGULATIONS OF 1943
MAY 1952

Form Approved
Budget Bureau No. 48-R294

NEW YORK FOREIGN TRADE ZONE OPERATORS, INCORPORATED
FOREIGN TRADE ZONE NO. 1
NEW YORK, N. Y.

I/15864

57868

ZONE 1, NEW YORK Zone Lot No. _____

PERMIT

APPLICATION TO ADMIT MERCHANDISE INTO FOREIGN-TRADE ZONE

DEC 15 1955 DEC 15 1955

Grantee, Foreign-Trade Zone Date DEC 15 1955 1955

Sir: Application is hereby made to admit merchandise into the Foreign-Trade Zone.

Bonded Carrier or Cartman IN TRANSIT C.H. License No. 1237

Country of Origin of Merchandise W. Germany Via _____

Transferred from _____ Freight, Mail-Express 12/2/55

Carrier to the U.S. Neuenfels arrived (U.S.) DEC 15 1955 from Port of Bremen B/L

DEC 15 1955

Zone status desired for merchandise:

☐ Privileged Foreign ☐ Privileged Domestic ☐ Zone Restricted
■ Non-Privileged Foreign ☐ Non-Privileged Domestic

NO. OF PKGS.	MARKS & NUMBERS	DESCRIPTION OF MDSE	QUANTITY YDS. GALS. ETC.	WEIGHTS MEASUREMENTS	APPROXIMATE CIF LANDED VALUE
4 cs	NL 41/44 Alltransport New York	Camera Tripods	210 pcs.	339 lbs gross	$395.-

U.S. CUSTOMS New York

PERMIT

Store & Bill in Name of:
Semrib Trading Co.
972 Broad Street
Newark, N.J.

I declare to the best of my knowledge and belief that the above merchandise is not prohibited entry into the Foreign-Trade Zone within the meaning of section 3 of the Foreign-Trade Zones Act of 1934, as amended, Section 30.1, Customs Regulations of 1943, and section 400.801, Foreign-Trade Zones Board Regulations.

Foreign-Trade Zones agrees to receive merchandise

NEW YORK FOREIGN TRADE ZONE OPERATORS, INC.

By _____

Title _____

Carrier authorizes release to F.T. Zone

United States Navigation Co., Inc.
17 Battery Place, New York, N.Y.

By _____

Title _____

Applicant and Address

Alltransport Inc.
6 State Street NYC

By _____

Title atty

PERMIT

TO APPLICANT FOR PERMIT:

Permission is hereby granted to transfer the above merchandise to the Foreign-Trade Zone.

Collector of Customs By _____ Title _____

CUSTOMS REPORT OF MERCHANDISE RECEIVED AT ZONE

TO COLLECTOR OF CUSTOMS: Sir: The above merchandise was received on _____ 195_____ at the Foreign-Trade Zone with the following exceptions noted:

Deputy Collector, F.T.Z. By _____ Title _____

This form is distributed by the zone grantee.

(over)

Government's Exhibit 19

Record of Alltransport, Inc. covering an in bond shipment of 2 cases of tripods, bearing the marks JH 74, 75, from S. Brukirer to Kuhne and Nagel, Toronto, Canada.

(OFFSET)

[*For convenience of Court and Counsel this Exhibit is bound in on the opposite page.*]

Government's Exhibit 25

Consumption Entry, transferring cases marked ZL 41-44 from Foreign Trade Zone to Customs Territory.

(OFFSET)

[*For convenience of Court and Counsel this Exhibit is bound in on the opposite page.*]

Government's Exhibit 25

DUTIABLE

Customs Form 7501
TREASURY DEPARTMENT
8.27, 8.51, 10.31, 10.91, C. R. 1943
Dec. 1953

Collector's Copy ☑
Comptroller's Copy ☐
Statistical Copy ☐

CONSUMPTION ENTRY
UNITED STATES CUSTOMS SERVICE

FTZ LOT Bonded Carrier No. 57868
From Port of NY
Via 16 S.I. (Bonded carrier)

District No. 10 Port Code No. 01
Port of NY Ref# 15864 Date 1/17/56

Entry No. 810926
Term Bond No. 8964

Port of lading ____ B/L No. ____ Date of sailing ____ Port of unlading ____
(Above information to be furnished only when merchandise is imported by vessel)

Importer of record ALLTRANSPORT INCORPORATED (Name) 6 STATE STREET, NEW YORK 4, N. Y. (Street number, city, and State)

For account of Semrhib Trading Co. 972 Broady Str. Newark, NJ (Street number, city, and State)

C'Wise FTZ ex NY 12/[illegible]/55

926

Imported on the ss Moselstein (Name of vessel or carrier and motive power) Flag Ger. On 1/13/56 (Date imported) Via direct (Last foreign port)

Exported from Germany (Country) on 12/2/55 (Date) Consular invoice Munich 12/18/55 (Place, number, and date certified)

MARKS AND NUMBERS OF PACKAGES AND ORIGIN OF MERCHANDISE (1)	(2) DESCRIPTION OF MERCHANDISE, NUMBER AND KIND OF PACKAGES (Describe in tariff terms in enough detail to permit classification according to Schedule A)			ENTERED VALUE (Do not use U. S. DOLLARS (see Note 2) (3)	TARIFF W		DUTY (6)	
	GROSS WEIGHT IN POUNDS (see Note 1) (2a)	SCHEDULE A COMMODITY NUMBER (2b)	NET QUANTITY IN SCHEDULE A UNITS (state units) (2c)		PARAGRAPH (4)	RATE (5)	DOLLARS	CENTS
Z L Alltransport New York 41/44	Four cases Camera Tripods 339	6200.990 $ 594.77	210 pcs- as $ 595.-	595	397	22½%	133	88
		(4)						
c/o: West Germany								

ESTIMATED
JAN 17 1956

Federal Insurance Co.
90 John Str. NYC

Number of invoices one W. H. Entry No. ____ G. O. No. ____

Note 1.—In column number (2a), insert "Gross Weight in Pounds" immediately below the description of merchandise. If gross weight is not available for each Schedule A item included in one or more packages, insert approximate shipping weight for each Schedule A item. The total of these estimated weights should equal the actual weight of the entire package or packages.

Note 2.—The entered value shown for free or specific-rate merchandise must not include nondutiable charges.

Signature ALLTRANSPORT INC.
Per [illegible] Atty.
Address 6 STATE STREET, NEW YORK 4, N. Y.

Government's Exhibit 26

Customs Form 7512
TREASURY DEPARTMENT
Feb. 1954
Form Approved
Budget Bur. No. 48-R0124

Entry No. 709
Port 6
Date

BUA-320

TRANSPORTATION ENTRY AND MANIF. OF GOODS SUBJECT TO CUSTOMS INSPECTION AND [illegible]

Bureau of Customs

Entry No. 81416
Class of Entry T & E
(I. T.) (Wd. T.) (Wd. E.) (T. E.) (Drawback, etc.

District No. 10 Port Code No. 01

First U. S. Port of Unlading

Port of NEW YORK/16575 Date 1/23/56

Entered or imported by Alltransport Inc. 6 State Street NYC to be shipped in bond via 1237 Maislin Bros. (C. H. L. number) (Vessel or carrier) 28 W.R. (Car number and initial) (Pier or station) consigned to Collector of customs at Champlain, NY Final foreign destination Toronto, Canada (For exportations only)

Consignee Kuhns & Nagel 19 Melinda Str. Toronto, Canada (At customs port of exit or destination)

Foreign port of lading Bremen B/L No. 6 Date of sailing 1/4/56 (Above information to be furnished only when merchandise is transported by vessel)

Imported on the ss Black Falcon (Name of vessel or carrier and motive power) Flag Nor. on 1/23/56 (Date imported) via direct (Last foreign port)

Exported from Germany (Country) on 1/4/56 (Date) Goods now at Ft Smith Str. B'klyn (Name of warehouse, station, pier, etc.)

MARKS AND NUMBERS OF PACKAGES	DESCRIPTION AND QUANTITY OF MERCHANDISE NUMBER AND KIND OF PACKAGES (Describe fully as per shipping papers)	GROSS WEIGHT IN POUNDS	VALUE (Dollars only)	RATE	DUTY
I H 74/75 Alltransport New York	Two cases Tripods T 612 (2)	165	200.-	22½%	

G. O. No.

TO COLLECTOR: I certify that the above-described goods were laden as stated above, sealed with customs seals Nos. [illegible] that the packages (were) (were not) corded and sealed; that the goods agreed with the manifest and were in apparent good order except as noted.

Short or over from importing vessel or carrier.

(Date) *Inspector or Warehouse Officer.*

I truly declare that the statements contained herein are true and correct to the best of my knowledge and belief.

Entered or withdrawn by Alltransport Inc. by [illegible] Atty

To the Inspector or Warehouse Officer: The above-described goods shall be disposed of as specified herein.

J Rinaldi
For the Collector.

RECEIVED from the collector of customs of above district the merchandise described in this manifest for transportation and delivery into the custody of the customs officers at the port named above, all packages in apparent good order except as noted hereon.

Attorney or Agent of Carrier.

Government's Exhibit 40A

Government's Exhibit 26

Transportation Entry and Manifest of Goods subject to Customs Inspection and Permit dated January 23, 1956, covering 2 cases of tripods marked IH 74, 75.

(OFFSET)

[*For convenience of Court and Counsel this Exhibit is bound in on the opposite page.*]

Government's Exhibit 40A

Photograph of cases marked IH 74 and III 75.

(PHOTOPRINT)

[*For convenience of Court and Counsel this Exhibit is bound in on the opposite page.*]

Government's Exhibit 40B

Photograph of case marked ZL 42.

(PHOTOPRINT)

[*For convenience of Court and Counsel this Exhibit is bound in on the opposite page.*]

Government's Exhibit 40B

Government's Exhibit 40C

Photograph of cases marked ZL 42 and III 74.

(PHOTOPRINT)

[For convenience of Court and Counsel this Exhibit is bound in on the opposite page.]

Government's Exhibit 40C

FILED
AUG 14 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 369

MORITZ BROKER,

Petitioner,

and

PASQUALE MAISIELLO, JOHN MAISIELLO, HENRY WEGNER, S. BRUKIRER and P. M. TRANSFER CO., INC.,

Defendants,

against

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JESSE CLIMENKO
Counsel for Petitioner
30 Broad Street
New York 4, N. Y.

JESSE CLIMENKO
MARTIN I. SHELTON
of Counsel

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

MORITZ BROKER, *Petitioner,* and PASQUALE MAISIELLO, JOHN MAISIELLO, HENRY WEGNER, S. BRUKIRER AND P. M. TRANSFER CO., INC., *Defendants,* *against* UNITED STATES OF AMERICA, *Respondent.*	No.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered in the above entitled case on July 16, 1957.

CITATIONS TO OPINIONS BELOW

The opinion of the Court of Appeals is not yet officially reported. It is printed in Appendix A hereto (*infra*, pp. 1b-4b).

JURISDICTION

The judgment of the United States Court of Appeals, sought to be reviewed, was dated and entered on July 16, 1957, and is printed in Appendix A hereto (*infra*, p. 5b). The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1).

QUESTIONS PRESENTED

1. Was petitioner in a criminal proceeding deprived of a fair trial and his rights under the due process clause of the Fifth Amendment, when the prosecution produced at the trial a witness whom it had transported from Germany and who testified as to alleged statements made to him in Germany by another defendant and an alleged co-conspirator, one S. Brukirer, which testimony incriminated petitioner, and which petitioner was unable to rebut by reason of the alleged co-conspirator's absence from this country and the previous denial of petitioner's motion to take the deposition of said alleged co-conspirator in Germany on written interrogatories, the answers to which petitioner claimed would tend to establish his innocence.

2. Did the second count set forth in the indictment sufficiently charge an offense under the laws of the United States?

STATUTES INVOLVED

The constitutional and statutory provisions involved are the Fifth Amendment to the Constitution of the United States; Rule 15 of the Federal Rules of Criminal Procedure; 18 U. S. C. § 371, 62 Stat. 701; 18 U. S. C. § 542, 62 Stat.

715 as amended 69 Stat. 242; 18 U. S. C. § 545, 62 Stat. 716 as amended 68 Stat. 782, 68 Stat. 1141, 69 Stat. 242; 19 U. S. C. § 1484, 46 Stat. 722 as amended 52 Stat. 1083, 67 Stat. 509, 517; 19 U. S. C. § 1485, 46 Stat. 724, as amended 52 Stat. 1083. The pertinent provisions thereof are printed in Appendix B hereto (*infra*, pp. 6b-16b).

STATEMENT

Petitioner was convicted in the District Court of each of three counts of an indictment (99a-I*), which charged (8a-11a-I) all the defendants named therein with (a) violating Section 542 of Title 18, U. S. C., by entering and introducing, and attempting to enter and introduce into the commerce of the United States, watch movements by means of a false statement; (b) violating Section 545 of Title 18, U. S. C., by receiving, concealing and facilitating the transportation and concealment of said watch movements after importation, knowing them to have been imported and brought into the United States contrary to law; and (c) violating Section 371 of Title 18, U. S. C., by conspiring with each other since May 1954 to commit offenses against the United States, to wit, smuggling into the United States watch movements and cameras which should have been invoiced, and receiving, concealing and facilitating the transportation and concealment of watch movements and cameras after importation, knowing the same to have been brought into the United States contrary to law.

Before the trial commenced, all the other defendants, except petitioner and S. Brukirer, withdrew their previous pleas of not guilty and pleaded guilty to the third count of

*Unless otherwise indicated, the numbers in parentheses refer to the pages in the Appendices printed for the Court of Appeals. "I" denotes appellant's appendix and "II" denotes respondent's appendix in that Court. The numbers in brackets refer to the original papers on file constituting the Record on Appeal.

the indictment (4a-I). Defendants Wegner and the Maisiello's, who were brothers, testified for the prosecution during the trial. They each received sentence of six months (5a-I). The indictment was severed as to defendant S. Brukirer, he being in Germany at the time of trial [1112]. The trial took place before Hon. Skelly J. Wright, U. S. D. J., on August 6, 8, 9, 10, 13, 14 and 15, 1956 (4a-5a-I). The jury deliberated approximately twelve hours, before bringing back a verdict of guilty (93a-98a-I). Petitioner was sentenced to serve the maximum permissible term on each count, to-wit, two years on count one and five years each on counts two and three (99a-I). The district court directed that the sentences run concurrently with each other (99a-I).

The indictment herein was filed on April 18, 1956, and petitioner was arrested on the same day (1a-I). Sometime in the middle of May, petitioner's trial counsel was informed by the Assistant United States Attorney in charge that a German customs agent would be brought here to testify at the trial for the purpose of establishing that Brukirer had been questioned by him in Germany and asked to whom he was shipping certain watch movements (which were the subject of the indictment) which had been seized in Germany and that Brukirer replied that he was shipping them to petitioner or to a company belonging to petitioner (21a-I). The defense thereupon began to make inquiries as to what the facts were and had difficulty in making direct contact with Brukirer (21a-I). However, in the early part of July (23a-I) trial counsel for petitioner learned that subsequent to the time the first statement was allegedly made by Brukirer he was again questioned by the German authorities, at which time Brukirer denied that he was shipping the watch movements to petitioner (23a-I) and also stated that petitioner was not involved in the shipment (25a-I), and that Brukirer was willing to so swear (25a-I).

As soon as this information was received, a motion was made (12a-13a-I) for an order directing the issuance of a commission to take the deposition of Brukirer on written interrogatories pursuant to Rule 15 of the Federal Rules of Criminal Procedure.

The papers in support of the motion were filed on July 13, 1956 (3a-I). In view of the reluctance of the prosecution to accept short notice, the motion itself did not come on for hearing until July 23, 1956 (30a-I). On the argument, the motion was opposed principally on the grounds, first, that it was not timely, and second, that there was no affidavit from Brukirer indicating his willingness to have his deposition taken (33a-I).

Insofar as timeliness is concerned, the principal contention made was that on June 18, 1956 the case was assigned for trial on July 23, 1956 or as soon thereafter as it could be heard (16a-I) and that the granting of the motion would upset these arrangements.

The Court indicated on the argument that it would deny the motion (31a-I), but that it would also consider a renewal of the argument if additional facts were brought to its attention which warranted that procedure (33a-I). Immediately thereafter and in order to obviate the second contention advanced by the Government that there was nothing from Brukirer to indicate that he would consent to giving his deposition, a cablegram was sent to Brukirer asking him that question, and an affirmative reply was received (34a-I).

These facts were presented to the Court on July 26, 1956 (33a-I). During the course of the presentation, the Assistant United States Attorney in charge stated that another attorney had asked him "if there was a possibility of a delay or an adjournment because Mr. Broker had come to his office and wanted to have him substituted as the attorney and had offered him a fee, and I had told him that I would

not consent to any adjournment at this time" (38a-I). This conversation was injected into the argument because it "goes against the statement" in petitioner's moving affidavit "that he is not financially able to take oral depositions in Germany instead of written interrogatories if this motion was ever decided in his favor" (39a-I). The Court thereupon stated on the record to petitioner's counsel (39a-I):

> "That puts a different color on the whole case. I was about to grant your motion."

The Court directed the Assistant United States Attorney in charge to file an affidavit as to the conversation, and denied the motion with the comment that petitioner was "trifling with the Court" (41a-I). The affidavit actually filed by the Assistant United States Attorney in charge (42a-I) did not contain any averment whatsoever with respect to his statement that petitioner had offered a fee to the other attorney.

In subsequent affidavits submitted by both petitioner and his trial counsel, it appeared that all petitioner had done, with the permission of his then counsel (39a-40a-I), was to ask another attorney if he would consider entering the case, either to assist petitioner's then counsel, or the latter to assist him, that the other attorney advised petitioner that he was planning a vacation and would not consider entering the case unless the trial could be adjourned, and that no fee arrangements of any kind had been discussed (45a-47a-I).

At the trial Heinrich Lamping, the German Custom agent who was brought to the United States from Germany, was called by the prosecution, as one of its principal witnesses (57a-I). Lamping testified that in December 1955 he seized two boxes of watches in Bremen, Germany, belonging to S. Brukirer (58a-I), that Brukirer came to see him from Munich in an effort to get the seizure suspended

(59a-I), that he told Brukirer that he, Lamping, suspected that Brukirer was the purchaser of the watches in Switzerland, and intended to smuggle them into Germany (60a-I), that Brukirer told him that was nonsense and that the "watches were destined to go to America" (60a-I), that Lamping noticed that Brukirer "in some way hemmed and that there was something which kept him from telling me that story, and he tried to convince me that this had nothing to do with the German Customs and that I should release the watches" (60a-I), that Lamping told him that he must have the truth (60a-I), whereupon Brukirer asked Lamping if he was under an obligation to inform American Customs to which Lamping stated "No, I am not so obligated" (60a-I).

Lamping also testified that Brukirer then told him that these watches were intended to be smuggled to the United States as tripods and that "he had these instructions from his broker, Mr. Semrhib, as to what he should do in Germany" (61a-I), whereupon Lamping stated that he would release the cases on the condition they be shipped to the United States (61a-I), and that Brukirer was very happy about it (62a-I). At the trial Lamping also testified that he found out that Broker and Semhrib were the same person (63a-I), that Brukirer told him that Semhrib was the purchaser of the watches (71a-I), that Brukirer "was only the executive organ of Mr. Semhrib" (75a-I), and that Brukirer had told him that "Semrib had visited in Germany about a month ago and saw him [Brukirer] in Munich and asked him to please attend to this matter just as a favor" (75a-I). It was established at the trial that petitioner was never in Germany during that period and in fact had not been in Europe subsequent to the year 1953 [833a].

On appeal the principal contention made on behalf of petitioner was that he was denied a fair opportunity to present his defense by reason of the denial by the District

Court of his motion to take the deposition of S. Brukirer. The Court of Appeals in rejecting this contention said (215a-216a - H):

> "The motion was not made until the eve of trial, three months after Brukirer had been named as a coconspirator and more than two months after the appellant had been apprised by the Government that it would offer a witness who would testify that Brukirer had made statements incriminating the appellant. No satisfactory explanation of this delay was given. Nor was there any showing that Brukirer's answers, if taken, would tend to exonerate the appellant. The circumstances were such as strongly to suggest that the motion was only a dilatory tactic, as the judge apparently thought. Under Rule 15 the judge had discretion to rule on the motion. We think here he made sound use of that discretion. *Heflin* v. *United States*, 5 Cir., 223 F. 2d 371."

With respect to the second question presented on this petition for a writ of certiorari, a motion had been made in the District Court to dismiss the second count of the indictment on the ground that it failed to state an offense which was denied (3a-I). On appeal to the Court of Appeals this ruling was affirmed without extended discussion, the court citing *United States* v. *Debrow*, 346 U. S. 374, 376; *United States* v. *Lepowitch*, 318 U. S. 702, 704 and *United States* v. *Josephson*, 2 Cir., 165 F. 2d 82, 85, cert. den. 333 U. S. 838 in support of its conclusion.

REASONS FOR GRANTING THE WRIT

1. The Court of Appeals, in sanctioning the denial by the District Court of petitioner's motion to take the deposition of Brukirer on written interrogatories, has, it is respectfully submitted, decided a federal question, i.e.,

whether or not petitioner had been accorded due process of law, in a way which is in conflict with applicable principles enunciated by this court and others, and in so doing has departed from the accepted and usual course of judicial proceedings.

This tribunal has said that "Due process forbids any exercise of judicial power which, but for the constitutional infirmity, would substantially alter a defendant's rights." (*Griffin* v. *Griffin*, 327 U. S. 220, 231) and that "A fair trial in a fair tribunal is a basic requirement of due process" (*In re Murchison*, 349 U. S. 133, 137). It is respectfully submitted that the denial of petitioner's motion to take the deposition of Brukirer deprived him of a fair opportunity to present his defense and thus violated his rights under the due process clause of the Fifth Amendment.

Rule 15(a) of the Federal Rules of Criminal Procedure authorizes the Court "at any time" to grant a motion to take the testimony of a witness if (a) it appears that he may be unable to attend, (b) the testimony is "material", and (c) the taking of the deposition is "necessary to prevent a failure of justice". We submit that each of these conditions was complied with in the instant case. Brukirer being a German resident as well as a co-defendant was obviously disabled from attending. That Brukirer's testimony was material can hardly be doubted. It was sought not only to establish that petitioner was not involved in the alleged smuggling operations, but also to establish that a prior statement allegedly made by Brukirer to a German customs officer which implicated petitioner on each of the counts of the indictment, was not true. Nor can it be urged that it was not necessary to take his deposition to prevent a failure of justice.

Thus, in *United States* v. *Wilder*, 14 Fed. 393, the defendant was charged with smuggling. He applied for the issuance of a commission to take the depositions of

witnesses beyond the United States who were material to his defense. In granting the motion, the Court said (p. 393):

> "It is so abhorrent to all ideas of justice that a person charged with crime shall not have full opportunity to make his defense by witnesses, that although I am not prepared to hold that evidence taken as proposed in this case will be admitted on the trial, I am of the opinion that the commission and opportunity prayed for ought to be granted."

In *United States* v. *Hofmann*, 24 F. Supp. 847, the late Judge Hulbert granted a motion in a criminal case to take the deposition of a witness without the United States on defendant's application. In commenting upon the contention that there was no power to grant the motion, the Court said (p. 848):

> "The contention that this Court is without power to enable the defendant to secure evidence abroad by proper methods is abhorrent to American instincts. 'It may suit the purpose of despotic power; but it cannot abide the pure atmosphere of political liberty and personal freedom.'
>
> "Amendment 5 to the Constitution of the United States, U. S. C. A. Const. Amend. 5, guarantees that no person shall be deprived of his life, liberty or property without due process of law, and Amendment 6, U. S. C. A. Const. Amend. 6, insures a defendant's right 'to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.'
>
> "Compulsory process does not ordinarily extend beyond the boundaries of the United States but the excerpts of the Constitutional Amendments, above referred to, reflect the attitude of its Framers toward the preservation of personal liberties."

In *United States* v. *Cameron*, 15 Fed. 794, the Court granted a motion of defendant to take the deposition of

witnesses residing "hundreds of miles from the place of trial". In answering a contention made in opposition to the motion, the Court said (p. 798):

> "It is insisted that this construction of the statute will enable defendants in criminal cases to manufacture evidence by taking depositions of accomplices and others, who will swear falsely; but the danger in this direction is little, if any, greater than that which would exist if the witnesses were all produced in court, for the government can always cross-examine, and its attorney can readily ascertain, the reputation for truth and veracity of witnesses examined, and, if it is bad, can show it to be so upon the trial. On the other hand, if depositions cannot be taken, the danger of doing injustice to defendants in some cases would be very great indeed. The life or liberty of a party accused may depend upon the testimony of a witness thousands of miles away from the place of trial, and whose presence there cannot be procured * * *."

In *Young Bark Yau* v. *United States*, 9 Cir., 33 F. 2d 236, the Court reversed an order of deportation, when it appeared that the lower Court refused to permit defendant to take the depositions of four witnesses in China, one of whom was his mother who, it was alleged, would establish defendant's citizenship, and whose presence in this country could not be obtained. The Court said (p. 237):

> "It was averred that each of these four witnesses, if present in court, would testify of their own personal knowledge that the appellant was born in the Hawaiian Islands. This showing was in no wise controverted by the government. In fact, the government only interposed a demurrer to the application, thus admitting the facts. An American citizen, threatened with deportation because of alienage, has at least as much right to take depositions to establish his status as has any other litigant in a court of

> justice where civil rights are involved, and we are constrained to hold that the court below abused its discretion, and that the refusal to grant the application was prejudical error."

In commenting upon this decision, the Ninth Circuit in *Gung You* v. *Nagle*, 34 F. 2d 848, said (p. 851):

> "The refusal to hear competent witnesses or competent testimony available is a denial of due process of law, as we held in a recent case refusing to permit the taking of a deposition in such cases."

The Court of Appeals in sanctioning the denial of the motion by the District Court relied on two grounds (1) that the motion was not timely and (2) there was no showing that Brukirer's answers would exonerate petitioner.

With respect to the first ground the Court of Appeals pointed out that the motion was not made until three months after Brukirer had been named as a conspirator and more than two months after petitioner, through his counsel, had been apprised of the fact that the Government would offer a witness who would testify that Brukirer had made statements incriminating petitioner and that no satisfactory explanation of the delay was given. In the first instance, we respectfully submit that these time intervals are not at all substantial; but on the contrary, are relatively short. No one can dispute the fact that in numerous criminal prosecutions, the time interval between the filing of an indictment and the actual trial is substantially longer than that which took place in the instant case. The only possible consequence of the granting of the motion would have been a short adjournment in the actual trial. There was no showing and no claim by the prosecution that any one in the least perceptible degree would have been harmed thereby. We respectfully submit that if a short adjournment would have afforded petitioner an opportunity to obtain evidence estab-

lishing his innocence, and if no one was harmed by such adjournment, no court ought sanction a denial of that opportunity on the ground that there had been an alleged delay of some two months before any action was taken to procure that evidence.

As noted above, the Court of Appeals also stated in its opinion that no explanation had been given for the alleged delay. We respectfully submit that the learned Court's conclusion in this respect was erroneous. Thus, on the argument of the motion before the District Court, petitioner's counsel made the following statement (36a-37a-1):

> "Some time in the middle of May I spoke with Mr Jaffe [the Assistant United States Attorney in charge], and he hinted that Brukirer had made damaging statements in Europe, without any additional information. At a subsequent conference with Mr. Jaffe the situation became a little more clear, and by the time the end of May arrived I already had the position that a customs agent—before that I just thought it was Brukirer—would be used as a witness here to set forth declarations made by Brukirer.
>
> As soon as I learned that I attempted through [1100] all means at my limited disposal to make an investigaiton in Germany and to find out two things: One, could we get Brukirer to come to the United States to testify? Two, could we get Brukirer to at least submit an affidavit in connection with a motion for interrogatories?
>
> We were unable—when I say "we", I include the defendant Broker—to get anything positive or affirmative from Brukirer. In the course of this investigation through channels outside of Brukirer I learned for the first time—I would like to pinpoint the date, if I can, exactly. Today is the 26th of July. That would be roughly about the 8th or 9th of July. I am not sure of the date. I learned that Brukirer had subsequently told the German Customs agents that he did not ship this to Broker, did not

> intend shipping this to Broker, and who his customer might be, his true customer might be, was in South American—that is the information I had—was something he was going to keep as his trade secret.
>
> He was then asked by the German Customs officers whether he would swear to that, and he replied yes. As soon as I learned that I began this motion for interrogatories."

Substantially, the same facts also appear in counsel's affidavit submitted on the motion (18a-19a-1). Under those circumstances, we respectfully submit that even if there was such a delay in making the motion as to warrant its denial on that ground, it was adequately explained, in view of the uncontradicted fact that the information upon which the motion was predicated was not available to petitioner's trial counsel prior to July 1956.

The second ground upon which the Court of Appeals relied in affirming the District Court's ruling was the conclusion that no showing had been made that Brukirer's answers would exonerate petitioner. It is respectfully submitted that the above quoted portion of counsel's argument, as well as his affidavit, make such a showing.

In the instant case the prosecution brought a witness at the expense of the government across the ocean to testify to a hearsay statement made to him by an alleged co-conspirator, which, in effect, proclaimed petitioner as being guilty of each of the counts in the indictment on which he was tried. Yet petitioner has been deprived of the opportunity of taking the deposition of the very same alleged co-conspirator notwithstanding the fact that a showing was made that that person was willing to give his deposition and to state that petitioner was not involved. We urge that such action offends the traditional concept of fair play which the due process clause of the Constitution grants to petitioner.

The learned District Court itself recognized the basic unfairness that was inherent in the entire situation when it questioned the Assistant United States Attorney as to why it was necessary for the prosecution to bring Lamping to this country to testify as to alleged admissions by a co-conspirator (27a-I). The answer was as follows (28a-I):

> "It gives the Court and the jury the beginning of the case, and it carries it through, and it also shows that, on an admission by a co-conspirator, in fact there was a conspiracy.
>
> As I understand, the defense is going to be that the name of Broker appears nowhere on the papers, and he doesn't know what this is all about, and it is a complete frame-up from beginning to end. The more people the better from the Government's viewpoint. It is harder to say that eight people are framing him than seven, and it is harder to say that two are framing him instead of one."

We respectfully submit that if it is better for the prosecution to have two witnesses instead of one, a defendant, at the very least, is entitled to have a similar opportunity. Petitioner was deprived of that opportunity by the learned Courts below in the instant case.

It must be remembered that it took the jury nearly twelve hours to reach a verdict (93a-I, 98a-I) and then only after the Court had instructed them that "absolute certainty cannot be expected" (94a-I) and that, if at all possible, it was desirable that a verdict should be reached (94a-95a-I).

We need not speculate on what the verdict would have been if the testimony of Brukirer was available at the trial. Suffice it to say that without it, and with the testimony of Lamping admitted, petitioner was deprived of a fair opportunity to present his defense. We respectfully submit that this was not only contrary to the mandate of Rule 15, but also violated petitioner's rights under the due process clause

of the Fifth Amendment of the Constitution of the United States of America.

We urge that the determinations made by the courts below are in conflict with basic principles of fairness inherent in a criminal prosecution which have been enunciated by this court and others, and that in making those determinations the learned courts below have departed from the accepted and usual course of judicial proceedings to such an extent as to call for an exercise of this court's power of supervision.

2. This Court has never to our knowledge passed upon the question as to the circumstances under which a defendant is entitled to take the deposition of a witness outside the United States in a criminal proceeding. It is respectfully submitted that this is an important question of federal law that should be settled by this Court. The Court of Appeals sustained the denial of the motion by the District Court as a matter of discretion, which it found the District Court had properly exercised. While it may be that cases may exist which justify the denial of an opportunity to a defendant to take the deposition of a witness in a foreign country in a criminal proceeding, it is believed that if such power does exist it should always be sparingly exercised. This is especially so since a defendant apparently has no right to obtain the testimony of a witness in a foreign country by compulsory process and yet it must be recognized that the due process clause of the Fifth Amendment requires that a defendant be given a fair opportunity to present his defense (*United States* v. *Hoffman*, 24 F. Supp. 847).

The Court of Appeals sanctioned the denial of the motion to take the deposition of Brukirer as a matter of discretion because it found that petitioner had not shown that Brukirer's testimony would exonerate him. Yet there

was an affidavit on file by petitioner's counsel (18a-19a-I) as well as the latter's statement to the District Court (36a-37a-I) which demonstrated that the learned Court of Appeals' conclusion was erroneous. The prosecution argued in its brief to the Court of Appeals as a ground for sustaining the denial of the motion in the District Court that an affidavit from Brukirer had not been obtained by petitioner. The Court of Appeals did not in its opinion set forth the reasons why it reached the conclusion that there was no showing that Brukirer's testimony would exonerate petitioner. Thus, it is impossible in the present state of this record for a defendant in a criminal proceeding to be certain of precisely what type of proof and the extent thereof that it is necessary to present to a District Court in order to permit him to take the deposition of a witness in a foreign country in a criminal proceeding. It is respectfully submitted that that is an important question of federal law in the administration of criminal proceedings which is not settled and should be settled by a pronouncement of this court for the guidance of both the bench and the bar.

3. In sustaining the denial of petitioner's motion in the District Court to dismiss the second count of the indictment on the ground of insufficiency, it is respectfully submitted that the learned Court of Appeals rendered a decision which is in conflict with a decision not only of this Court (*Keck v. United States*, 172 U. S. 434) but which is also in conflict with decisions rendered by the Court of Appeals for the Fifth Circuit (*Babb v. United States*, 218 F. 2d 538) and the Court of Appeals for the Ninth Circuit (*Steiner v. United States*, 229 F. 2d 745, cert. den. 352 U. S. 860).

The second count pleaded in the indictment purported to charge an offense under Section 545 of Title 18, U. S. C., which provides in part, as follows:

> "Whoever fraudulently or knowingly imports or brings into the United States, any merchandise contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law * * *"

Count II of the indictment charged appellant with having

> "knowingly received, concealed and facilitated the transportation and concealment of merchandise, to wit, 4,488 watch movements, after importation knowing the said merchandise to have been imported and brought into the United States contrary to law; to wit, Title 18, United States Code, Sections 542 and 545, and Title 19, United States Code, Sections 1001, 1484 and 1485."

In *Keck* v. *United States, supra,* the Court held that the use of the words "contrary to law" without more was insufficient to charge an offense. In that case the crime charged was that defendant (172 U. S. at p. 437)

> "'did knowingly, wilfully and unlawfully import and bring into the United States, and did assist in importing and bringing into the United States, to wit, into the port of Philadelphia,' diamonds of a stated value, 'contrary to law and the provisions of the act of Congress in such cases made and provided, with intent to defraud the United States.'"

The Court, in holding the indictment was insufficient, said (172 U. S. at p. 437):

> "As is apparent, the alleged offense averred in this count was charged substantially in the words of the statute. In the argument at bar counsel for the United States conceded the vagueness of the accusation thus made; and, tested by the principles laid down in *United States* v. *Carll,* 105 U. S. 611, 612

[26:1135]. *United States* v. *Hess*, 124 U. S. 483 [31:516], and *Evans* v. *United States*, 153 U. S. 584, 587 [38:830, 832], the count was clearly insufficient. The allegations of the count were obviously too general, and did not sufficiently inform the defendant of the nature of the accusation against him. The words, 'contrary to law,' contained in the statute clearly relate to legal provisions not found in section 3082 itself, but we look in vain in the count for any indication of what was relied on as violative of the statutory regulations concerning the importation of merchandise. The generic expression, 'import and bring into the United States,' did not convey the necessary information, because importing merchandise is not *per se* contrary to law, and could only become so when done in violation of specific statutory requirements. As said in the *Hess Case*, at page 486:

'The statute upon which the indictment is founded only describes the general nature of the offense prohibited, and the indictment, in repeating its language without averments disclosing the particulars of the alleged offense, states no matters upon which issue could be formed for submission to a jury.' "

Precisely the same result was reached in both *Steiner* v. *United States*, *supra*, and *Babb* v. *United States*, *supra*, where defendants were charged in the indictment with having violated Section 545 of Title 18, U. S. C., in practically identical language as in the instant case.

In the Court of Appeals, the prosecution attempted to distinguish the instant indictment from those in the *Keck*, *Steiner* and *Babb* cases, *supra*, on the ground that the instant indictment set forth the laws which the importation is alleged to have been contrary to, "to wit, Title 18, United States Code, Sections 542 and 545, and Title 19, United States Code, Sections 1001, 1484 and 1485". We respect-

fully submit that this did not cure the deficiency because a mere reference to statutes, does not plead facts; and facts are what have to be alleged to charge a crime. Thus, in *Sutten* v. *United States*, 5 Cir., 157 F. 2d 661, defendant was convicted upon an information charging him with unlawfully having in his possession ten thousand pounds of sugar, the same being a rationed commodity "in violation of Second Revised Ration Order No. 3 and General Ration Order No. 8, as amended". In holding that the information was insufficient as a matter of law because it failed to allege facts, the Court pointed out that the phrase above quoted (157 F. 2d at p. 664)

> "is not an allegation of fact, but a legal conclusion of the pleader; it constitutes no part of the description of the offense".

Accord: *Alabama Packing Co.* v. *United States*, 5 Cir., 167 F. 2d 179

Moreover an examination of the statutes which are claimed to constitute the laws under which the watches were alleged to have been imported contrary to, will show that they define numerous offenses and provide for numerous requirements. The prosecution might just as well have charged that the importations were in violation of Title 18, U. S. C., for all the help this furnished in apprising appellant of the charge. Certainly, no one could possibly contend that that would have been sufficient.

The Court of Appeals affirmed the denial of the motion to dismiss made by the District Court without extended discussion. The Court in its opinion did not discuss nor did it comment upon the cases hereinabove set forth. It is respectfully submitted that there is a conflict between the decision of the Court of Appeals in this case and the decision of this Court in the *Keck* case as well as the decisions

of the Courts of Appeal in the *Babb* and *Steiner* cases. That conflict can only be resolved by a determination of this Court.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

JESSE CLIMENKO
Counsel for Petitioner

JESSE CLIMENKO
MARTIN I. SHELTON
of Counsel

APPENDIX A

Opinion

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 340—October Term, 1956.

(Argued June 13-14, 1957 Decided July 16, 1957.)

Docket No. 24357

UNITED STATES OF AMERICA,

Appellee,

—v.—

MORITZ BROKER,

Defendant-Appellant,

—and—

PASQUALE MAISIELLO, JOHN MAISIELLO, HENRY WEGNER, S. BRUIKIRER and P. M. TRANSFER CO., INC.,

Defendants.

Before:

CLARK, *Chief Judge,*
CHASE and HINCKS, *Circuit Judges.*

Appeal from a judgment of conviction entered in the United States District Court for the Southern District of New York, Wright, *J.*, and a jury, for smuggling merchandise into the United States, in violation of Title 18, United States Code, §§ 542 and 545. *Affirmed.*

JESSE CLIMENKO, of Gallop Climenko & Gould, New York, N. Y., *for appellant.*

JOHN T. MORAN, JR., Asst. United States Attorney, Southern District of New York, New York, N. Y. (Paul W. Williams, United States Attorney, and Arthur B. Kramer, Asst. U. S. Attorney, New York, N. Y., on the brief), *for appellee.*

PER CURIAM:

The jury found the appellant guilty on three counts: the first charging the introduction of watch movements into the United States by means of a false statement, in violation of 18 U. S. C. § 542; the second charging the receipt and concealment of the watch movements after importation into the United States "contrary to law," in violation of 18 U. S. C. § 545; and the third charging a conspiracy to commit the substantive crimes charged in the first two counts. Concurrent sentences were imposed; two years on Count 1 and five years each on Counts 2 and 3.

The appeal is principally based upon a denial by the trial judge of appellant's motion under Rule 15, Federal Rules of Criminal Procedure, to take in Germany by written interrogatories the deposition of one Brukirer—an alleged coconspirator and a named defendant. The motion was made not until the eve of trial; three months after Brukirer had been named as a coconspirator and more than two months after the appellant had been apprised by the Government that it would offer a witness who would testify that Brukirer had made statements incriminating the appellant. No satisfactory explanation of this delay was given. Nor was there any showing that Brukirer's answers, if taken, would tend to exonerate the appellant. The circumstances were such as strongly to suggest that the motion

was only a dilatory tactic, as the judge apparently thought. Under Rule 15 the judge had discretion to rule on the motion. We think that here he made sound use of that discretion. *Heflin* v. *United States*, 5 Cir., 223 F. 2d 371.

The appellant further claims that the offense charged in Count 1 was not proved. This count charged introduction into commerce "by means of a false statement contained in a form, entitled Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit." The proofs showed that this form was false in two respects: (a) in disclosing the packing cases covered by the form as containing tripods instead of watch movements, (b) in giving Canada instead of the United States as the destination. But Count 1 charged that the form was false as to contents: it did not charge falsity as to destination. The appellant insists that the only effective "means" for the attempted introduction into commerce in the United States was the false statement as to destination: that the alleged falsity as to contents was wholly immaterial to the perpetration of the crime.

Even so there was no deficiency of proof. As stated above, there was ample proof that the form, which constituted the "means" of the crime, was false as to destination as well as contents. Thus the real question posed relates not to the sufficiency of proof but the sufficiency of pleading. Was Count 1 fatally defective for its failure to allege falsity as to destination? We think not. It charged in the language of the statute that the means was a false form which was adequately identified as a "Transportation Entry and Manifest." That sufficiently defined the crime: it was not necessary to specify in just what respect the statement was false. *United States* v. *Debrow*, 346 U. S. 374, 376; *United States* v. *Lepowitch*, 318 U. S. 702, 704; *United States* v. *Josephson*, 2 Cir., 165 F. 2d 82, 85, cert. den. 333 U. S. 838.

The cases just cited also sustain the sufficiency of Count II against the appellant's attack. And his attack on the Government's summation rests on a petty point which was not saved below. See *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 238.

Affirmed.

Judgment

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, ınd for the Second Circuit, held at the United States ırthouse in the City of New York, on the 16th day of ', one thousand nine hundred and fifty-seven.

sent:

HON. CHARLES E. CLARK,
Chief Judge

HON. HARRIE B. CHASE
HON. CARROLL C. HINCKS
Circuit Judges.

UNITED STATES OF AMERICA,
Plaintiff-Appellee

v.

MORITZ BROKER,
Defendant-Appellant

Appeal from the United States District Court for the ıthern District of New York.

This cause came on to be heard on the transcript of ord from the United States District Court for the South- District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, udged, and decreed that the judgment of said District trict Court be and it hereby is affirmed.

A. DANIEL FUSARO
Clerk

APPENDIX B

STATUTES INVOLVED

U. S. CONST., AMEND V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Rule 15, Federal Rules of Criminal Procedure

Rule 15. Depositions

(a) When Taken. If it appears that a prospective witness may be unable to attend or prevented from attending a trial or hearing, that his testimony is material and that it is necessary to take his deposition in order to prevent a failure of justice, the court at any time after the filing of an indictment or information may upon motion of a defendant and notice to the parties order that his testimony be taken by deposition and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that his deposition be taken. After the deposition has been subscribed the court may discharge the witness.

(b) Notice of Taking. The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time.

(c) Defendant's Counsel and Payment of Expenses. If a defendant is without counsel the court shall advise him of his right and assign counsel to represent him unless the defendant elects to proceed without counsel or is able to obtain counsel. If it appears that a defendant at whose instance a deposition is to be taken cannot bear the expense thereof, the court may direct that the expenses of travel and subsistence of the defendant's attorney for attendance at the examination shall be paid by the government. In that event the marshal shall make payment accordingly.

(d) How Taken. A deposition shall be taken in the manner provided in civil actions. The court at the request of a defendant may direct that a deposition be taken on written interrogatories in the manner provided in civil actions.

(e) Use. At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if it appears: That the witness is dead; or that the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or that the witness is unable to attend or testify because of sickness or infirmity; or that the party offering the deposition has been unable to procure the attendance of the witness by the subpoena. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a

deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

(f) Objections to Admissibility. Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions.

Title 18, United States Code, Section 371.

§ 371. Conspiracy to commit offense or to defraud United States.

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

Title 18, United States Code, Section 542.

§ 542. Entry of goods by means of false statements.

Whoever enters or introduces, or attempts to enter or introduce, into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance, or makes any false statement in any declaration without reasonable cause to believe the truth of such statement, or procures the making of any such false statement as to any matter material thereto without reasonable cause to believe the

truth of such statement, whether or not the United States shall or may be deprived of any lawful duties; or

Whoever is guilty of any willful act or omission whereby the United States shall or may be deprived of any lawful duties accruing upon merchandise embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement, or affected by any such act or omission—

Shall be fined for each offense not more than $5,000 or imprisoned not more than two years, or both.

Nothing in this section shall be construed to relieve imported merchandise from forfeiture under other provisions of law.

The term "commerce of the United States", as used in this section, shall not include commerce with the Philippine Islands, Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam.

Title 18, United States Code, Section 545.

§ 545. Smuggling goods into the United States.

Whoever knowingly and wilfully, with intent to defraud the United States, smuggles, or clandestinely introduces into the United States any merchandise which should have been invoiced, or makes out or passes, or attempts to pass, through the customhouse any false, forged, or fraudulent invoice, or other document or paper; or

Whoever fraudulently or knowingly imports or brings into the United States, any merchandise contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law—

Shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Proof of defendant's possession of such goods, unless explained to the satisfaction of the jury, shall be deemed

evidence sufficient to authorize conviction for violation of this section.

Merchandise introduced into the United States in violation of this section, or the value thereof, to be recovered from any person described in the first or second paragraph of this section, shall be forfeited to the United States.

The term "United States", as used in this section, shall not include the Philippine Islands, Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam.

Title 19, United States Code, Section 1484:

§ 1484. Entry of merchandise—Requirement and time.

(a) Except as provided in sections 1490, 1498, 1552, and 1553 and in subdivision (j) of section 1336 of this title, and in subdivisions (h) and (i) of this section, the consignee of imported merchandise shall make entry therefor either in person or by an agent authorized by him in writing under such regulations as the Secretary of the Treasury may prescribe. Such entry shall be made at the customhouse within five days, exclusive of Sundays and holidays, after the entry of the importing vessel or report of the vehicle, or after the arrival at the port of destination in the case of merchandise transported in bond, unless the collector authorizes in writing a longer time.

(b) Production of certified invoice.

The Secretary of the Treasury shall provide by regulation for the production of a certified invoice with respect to such merchandise as he deems advisable and for the terms and conditions under which such merchandise may be permitted entry under the provisions of this section without the production of a certified invoice.

(c) Production of bill of lading.

The consignee shall produce the bill of lading at the time of making entry, except that—

(1) If the collector is satisfied that no bill of lading has been issued, the shipping receipt or other evidence satisfactory to the collector may be accepted in lieu thereof;

(2) The collector is authorized to permit entry and to release merchandise from customs custody without the production of the bill of lading if the person making such entry gives a bond satisfactory to the collector, in a sum equal to not less than one and one-half times the invoice value of the merchandise, to produce such bill of lading, to relieve the collector of all liability, to indemnify the collector against loss, to defend every action brought upon a claim for loss or damage, by reason of such release from customs custody or a failure to produce such bill of lading and to entitle any person injured by reason of such release from customs custody to sue on such bond in his own name, without making the collector a party thereto. Any person so injured by such release may sue on such bond to recover any damages so sustained by him; and

(3) The provisions of this subdivision shall not apply in the case of an entry under subdivision (h) or (i) of this section (relating to entry on carrier's certificate and on duplicate bill of lading, respectively).

(d) Signing and contents.

Such entry shall be signed by the consignee, or his agent, and shall set forth such facts in regard to the importation as the Secretary of the Treasury may require for the purpose of assessing duties and to secure a proper examination, inspection, appraisement, and liquidation, and shall be accompanied by such invoices, bills of lading, certificates,

and documents as are required by law and regulations promulgated thereunder.

(e) Statistical enumeration.

The Secretary of the Treasury, the Secretary of Commerce, and the Chairman of the United States Tariff Commission are authorized and directed to establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise imported into the United States, and as a part of the entry there shall be attached thereto or included therein an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and the value of the total quantity of each kind of article.

(f) Packages included.

If any of the certificates or documents necessary to make entry of any part of merchandise arriving on one vessel or vehicle and consigned to one consignee have not arrived, such part may be entered subsequently and notation of the packages or cases to be omitted from the original entry shall be made thereon. One or more packages arriving on one vessel or vehicle addressed for delivery to one person and imported in another package containing packages addressed for delivery to other persons may be separately entered, under such rules and regulations as the Secretary of the Treasury may prescribe. All other merchandise arriving on one vessel or vehicle and consigned to one consignee shall be included in one entry, unless the Secretary of the Treasury shall authorize the inclusion of portions of such merchandise in separate entries under such rules and regulations as he may prescribe; except that, in the case of articles not subject to a quantitative or tariff-rate quota, entry for the entire quantity covered by an entry for immediate transportation made under section

1552 of this title may be accepted at the port of entry designated by the consignee, or his agent, in such entry after the arrival of any part of such quantity at such designated port or at such other place of deposit as may be authorized in accordance with regulations prescribed by the Secretary of the Treasury.

(g) Statement of Cost of Production.

Under such regulations as the Secretary of the Treasury may prescribe, the collector or the appraiser may require a verified statement from the manufacturer or producer showing the cost of production of the imported merchandise, when necessary to the appraisement of such merchandise.

(h) Entry on Carrier's certificate.

Any person certified by the carrier bringing the merchandise to the port at which entry is to be made to be the owner or consignee of the merchandise, or an agent of such owner or consignee, may make entry thereof, either in person or by an authorized agent in the manner and subject to the requirements prescribed in this section (or in regulations promulgated hereunder) in the case of a consignee within the meaning of paragraph (1) of section 1483.

(i) Entry on duplicate bill of lading.

Any person may, upon the production of a duplicate bill of lading signed or certified to be genuine by the carrier bringing the merchandise to the port at which entry is to be made, make entry for the merchandise in respect of which such bill of lading is issued, in the manner and subject to the requirements prescribed in this section (or in regulations promulgated hereunder) in the case of a consignee within the meaning of paragraph (1) of section 1483, except that such person shall make such entry in his own name.

(j) Release of merchandise.

Merchandise shall be released from customs custody only to or upon the order of the carrier by whom the merchandise is brought to the port at which entry is made, except that merchandise in a bonded warehouse shall be released from customs custody only to or upon the order of the proprietor of the warehouse. The collector shall return to the person making entry the bill of lading (if any is produced) with a notation thereon to the effect that entry for such merchandise has been made. The collector shall not be liable to ~~any~~ person in respect of the delivery of merchandise released from customs custody in accordance with the provisions of this section. Where a recovery is had in any suit or proceeding against a collector on account of the release of merchandise from customs custody, in the performance of his official duty, and the court certifies that there was probable cause for such release by the collector, or that he acted under the directions of the Secretary of the Treasury, or other proper officer of the Government, no execution shall issue against such collector, but the amount so recovered shall, upon final judgment, be paid out of moneys appropriated from the Treasury for that purpose.

Title 19, United States Code, Section 1485.

§1485. Declaration—Requirement; Form and contents.

(a) Every consignee making an entry under the provisions of section 1484 of this title shall make and file therewith, in a form to be prescribed by the Secretary of the Treasury, a declaration under oath, stating—

(1) Whether the merchandise is imported in pursuance of a purchase or an agreement to purchase, or whether it is imported otherwise than in pursuance of a purchase or agreement to purchase;

(2) That the prices set forth in the invoice are true, in the case of merchandise purchased or agreed to be purchased; or in the case of merchandise secured otherwise than by purchase or agreement to purchase, that the statements in such invoice as to value or price are true to the best of his knowledge and belief;

(3) That all other statements in the invoice or other documents filed with the entry, or in the entry itself, are true and correct; and

(4) That he will produce at once to the collector any invoice, paper, letter, document, or information received showing that any such prices or statements are not true or correct.

(b) Books and Periodicals.

The Secretary of the Treasury is authorized to prescribe regulations for one declaration in the case of books, magazines, newspapers, and periodicals published and imported in successive parts, numbers, or volumes, and entitled to free entry.

(c) Agents.

In the event that an entry is made by an agent under the provisions of section 1484 of this title and such agent is not in possession of such declaration of the consignee, such agent shall give a bond to produce such declaration.

(d) Liability of consignee for increased duties.

A consignee shall not be liable for any additional or increased duties if (1) he declares at the time of entry that he is not the actual owner of the merchandise, (2) he furnishes the name and address of such owner, and (3) within ninety days from the date of entry he produces a

declaration of such owner conditioned that he will pay all additional and increased duties, under such regulations as the Secretary of the Treasury may prescribe. Such owner shall possess all the rights of a consignee.

(e) Separate forms for purchase and nonpurchase importations.

The Secretary of the Treasury shall prescribe separate forms for the declaration in the case of merchandise which is imported in pursuance of a purchase or agreement to purchase and merchandise which is imported otherwise than in pursuance of a purchase or agreement to purchase.

(f) Deceased or insolvent persons; partnerships and corporations.

Whenever such merchandise is consigned to a deceased person, or to an insolvent person who has assigned the same for the benefit of his creditors, the executor or administrator, or the assignee of such person or receiver or trustee in bankruptcy, shall be considered as the consignee; when consigned to a partnership the declaration of one of the partners only shall be required, and when consigned to a corporation such declaration may be made by any officer of such corporation. Whether the consignee is an individual, a partnership, or a corporation, the declaration may be made by any person who has knowledge of the facts and who is specifically authorized by such individual, a member of such partnership, or an officer of such corporation to make such declaration.

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No. 369

In the Supreme Court of the United States

OCTOBER TERM, 1957

MORITZ BROKER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
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OPINION BELOW

The opinion of the Court of Appeals (Pet. App. A 1b–4b) has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered July 16, 1957. The petition for a writ of certiorari was filed August 14, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether in the circumstances of this case the District Court abused its discretion in denying petitioner's motion, on the eve of trial, to take the deposition

of a co-defendant in Germany by written interrogatories.[1]

STATEMENT

Petitioner was convicted in the United States District Court for the Southern District of New York on all counts of a three count indictment charging (1) importation of watch movements by means of a false statement; (2) receiving, concealing, and facilitating the transportation of the watch movements knowing them to have been brought into the country contrary to law; and (3) conspiracy to smuggle into the United States watch movements and cameras. (R. I, 8–11). He was given concurrent sentences of two years on the first count and five years on the other two (R. I, 99).

1. The evidence for the Government may be summarized as follows:

Under customs regulations, goods landing in the United States merely for the purpose of transhipment to another country may be admitted without inspection and without payment of import duty—a method known as importation in bond. Goods may also be held in the Foreign Trade Zone pending arrangements for transhipment. The goods may be carried from the point of landing, or from the Foreign Trade Zone, to the point of transhipment by licensed carriers who are allowed, when necessary, to hold the shipment overnight (R. II, 131–136). Firms known as customs' brokers arrange for the admission or forwarding of freight through customs (R. II, 6).

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[1] Petitioner also raises a question of the sufficiency of the indictment on one count, but this question is not really in the case because of concurrent sentences imposed. See footnote 4, *infra*, p. 9.

In May 1954, petitioner asked Wegner, traffic manager of Alltransport, a customs' broker, whether Wegner knew a trucker who could help petitioner in bringing in and exchanging merchandise (R. II, 6–9). Wegner spoke to Pat Maisiello of P. M. Transfer Company, Inc., the concern which handled bonded deliveries for Alltransport (R. II, 8–9). At a meeting of Wegner, the two Maisiellos, and petitioner, arrangements were made whereby the Maisiellos would receive $350 for each case of merchandise smuggled in (R. II, 15–16, 148–152, 163, 167–169).

The method of operation was for Wegner's firm, Alltransport, to act as forwarders to Canada of shipments supposed to contain clocks. Wegner, as traffic manager, would direct P. M. Transfer Company to do the trucking. The Maisiellos would remove the actual contents (cameras and watch movements), fill the packages with clocks supplied by petitioner, and then deliver the packages for transhipment (R. II, 19–21, 48–52, 62, 70–72, 83–84, 89–91, 98–102, 103–104). About eight to ten shipments were thus handled from May 1944, to December 1955 (R. II, 162–163).[2]

Petitioner told an old friend in Canada that he could help the friend out by giving him clocks at cost price (R. II, 173–176). The friend, who operated a tile business, picked up one shipment after petitioner

[2] The second shipment in 1954 supposed to contain clocks was discovered to contain cameras. Petitioner told Wegner not to worry, that he and a Mr. Brukirer in Munich, Germany, had a friend in customs who knew about shipments. The boxes were returned on orders from Germany (R. II, 40–46).

paid the charges. He failed to claim a second shipment (R. II, 56–58, 177–179).

The Maisiellos complained to petitioner, directly or through Wegner, that matters were not being handled well. There were various difficulties—that the boxes sent were too small for the clocks they presumably contained; that weights were not the same; and that the shipments were not being picked up in Canada (R. II, 37, 70, 73, 81–82, 86). Petitioner, on the other hand, complained of pilfering (R. II, 83, 91–97). In the fall of 1955, petitioner said that he had thought of a new method which would make unnecessary the opening of cases, that it would involve only a complete switch of boxes (R. II, 97, 162).

Four cases of tripods consigned to Semrhib Trading Corporation (a name under which petitioner operated (R. II, 110–111)), arrived in December 1955. They were put in the Foreign Trade Zone where merchandise in transit may be held without inspection (R. II, 76–77, 196). In January 1956, petitioner told Wegner that two cases would arrive from Germany consigned to Alltransport and that the firm would receive "direct instructions from S. Brukirer" to forward them to Canada (R. II, 112). At that time, the tripod cases then in the Foreign Trade Zone were to be withdrawn and Wegner was to tell the Maisiellos to have the withdrawn tripods and the two new cases in their place of business simultaneously. All that would be necessary was to switch an extra board on top (R. II, 112–115).

In December 1955, a German customs agent in Bremen seized two cases containing watch movements

when two other packages, said to contain tripods, were found to be empty (R. I, 59, 65). Brukirer came to the agent from Munich in an effort to get the watches released. Brukirer denied that the watches were to be smuggled into Germany. When told the watches would not be released unless a credible explanation was made, Brukirer asked whether the agent was under any obligation to inform the American customs officials. After the agent said he had no such obligation, Brukirer said that the watches were to be smuggled into the United States; that Mr. Semrhib had given him instructions. The agent agreed to release the watch movements if they were shipped to the United States. Brukirer said he could do this only if they were invoiced as tripods (R. I, 57–70). They were allowed to be so invoiced and were admitted to this country as tripods in bond for shipment to Canada (R. II, 141–145).

In New York, three of the cases actually containing tripods, which were being held in the Foreign Trade Zone, were taken out as import and duty paid thereon. They were taken by P. M. Transfer Company. Pat Maisiello then picked up the two cases allegedly containing tripods for transhipment, but actually containing the watch movements, on January 27, 1956. Agents followed him, seized the cases, and found the watch movements (R. II, 142–146). (The customs duty on the 4,488 watch movements found would have amounted to $13,130.10).

S. Brukirer had sent a letter to Alltransport, dated January 9, 1956, asking them to ship two cases of tripods to Canada (R. II, 120–121). After the seizure

of January 27th, Alltransport, on January 30, and 31, and again on February 13, 1956, received telegrams and letters from S. Brukirer in Munich telling it to redeclare the cases as watches and send them by airplane to Geneva. The February communications stated that the Semrhib Trading Company had nothing to do with the watches (R. II, 122–126).

2. Petitioner was arrested on April 18, 1956 and arraigned on April 19. In the middle of June, trial was set for July 23. About the middle of May, the Assistant United States Attorney, in a conversation with petitioner's attorney, told him that the German customs agent would be used by the Government to testify to his conversation with S. Brukirer at the time when the latter was endeavoring to get the watches released from the German customs. S. Brukirer was named as a co-defendant in the indictment.

On July 13, petitioner filed an application, returnable July 23, for leave to take the testimony of S. Brukirer in Germany on written interrogatories (R. I, 12–13). This was supported by petitioner's affidavit to the effect that the Government intended to call the German customs agent, that Brukirer was beyond the reach of the District Court, that petitioner lacked the financial means to arrange for an oral deposition, and that it was believed the interrogatories of S. Brukirer would serve to impeach or contradict the customs agent (R. I, 14–15). In opposition, the United States pointed out that there was no affidavit of S. Brukirer accompanying the motion (R. I, 16–17). Petitioner's attorney then filed a reply

affidavit to the effect that he, as attorney, had only recently learned that efforts to have S. Brukirer appear at the trial as a witness were unsuccessful. He also said that defense "sources", which were unnamed, had developed that—subsequent to the conversation to which the Government witness (the German customs agent) would testify—S. Brukirer, when questioned by German customs officials, had denied that petitioner was connected with the shipment and that S. Brukirer had said he would so swear. The attorney alleged that, as the result of this information, he was "morally certain" that Brukirer would submit to written interrogatories, particularly since the attorney assumed that the German government would "assist in the execution of the commission by applying necessary legal pressure on Brukirer" (R. I, 18–19).

At the argument on the motion, petitioner's attorney stated that this information that Brukirer had changed his story was not obtained from Brukirer (R. I, 25). When the judge asked why no attempt had been made to get an affidavit from the person who heard Brukirer so state, the attorney asked for permission to send a cablegram to Brukirer asking him whether he would sign interrogatories (R. I, 25). Government counsel stated that information from the German customs officials did not show that Brukirer had changed his story to them (R. I, 26). The District Court denied the motion as not timely filed and without sufficient predicate, stating that, in the interest of justice, the court was open to consider anything new that might arise (R. I, 32–33).

On July 26, petitioner renewed his motion, stating that a cable had been sent to S. Brukirer asking, with respect to the two cases involved, "Will you answer, sign, swear before American Consul question on this subject sent out through United States Court," to which the reply had been "Yes" (R. I, 34). The Government counsel pointed out that the fact that petitioner, in two days time, could get in touch with the co-defendant tended to emphasize the untimeliness of the motion, and also that petitioner's attorney had never specified the source of his information as to Brukirer's possible testimony. He also mentioned, in connection with the claim that petitioner was financially unable to take oral depositions, that Mr. Katzen, an attorney, had come to the United States Attorney's office the day after the preceding argument, asking about the possibility of adjournment. Mr. Katzen had said that petitioner had come to his office and offered him a fee as substituted attorney (R. I, 38–39). Petitioner's attorney stated that, some time before, petitioner had asked if he would mind if another attorney were to assist him, and he had expressed willingness; that the day before the motion under consideration, petitioner had told him that he had asked Mr. Katzen if Katzen could help, but that there was no thought of substitution (R. I, 40–41). The court then said, "That puts a different color on the whole case. I was about to grant your motion" (R. I, 39). And further (R. I, 41): "The District Attorney will make an affidavit outlining the statement made in

court today. The motion is denied. Your client, Mr. Broker, is trifling with the Court."[3]

ARGUMENT

The only question is whether, in the circumstances of this case, the District Court abused its discretion in denying petitioner's motion for leave to take the interrogatories of S. Brukirer in Germany.[4] The con-

[3] Government counsel's affidavit stated that Mr. Katzen told him that petitioner had said he wanted to retain Katzen in the case and Katzen had said he would be unable to take the retainer unless he could obtain an adjournment. Katzen asked whether adjournment would be possible on the ground that new counsel had come into the case, but was told that none would be granted. Petitioner's attorney filed an affidavit saying that Katzen had told him that, when Broker consulted Katzen, he (Katzen) said he would take no case which would interfere with his vacation plans. For that reason he had asked about the possibilities of adjournment. A fee was not discussed although Mr. Katzen had assumed that if he accepted the case there would be a fee. Petitioner's affidavit was that Mr. Katzen had said he would not take the case unless it were adjourned and that a fee had not been discussed (R. I, 42–47).

[4] Petitioner attacks the sufficiency of the indictment under count II on the ground that it fails to specify with sufficient particularity the facts showing that the watch movements had been imported "contrary to law." In view of the fact that the conspiracy count, which was fully sustained, supports the sentence, the other question is not in the case. *Pinkerton* v. *United States*, 328 U. S. 640. In any event, the indictment in this case is distinguishable from that in *Keck* v. *United States*, 172 U. S. 434, and more recent Court of Appeals cases following it, to the effect that an allegation that merchandise has been imported "contrary to law" is too indefinite to inform the accused of the offense with which he was charged. Here, the indictment did set forth that the merchandise had been introduced in violation of specific statutes: 18 U. S. C. 542, proscribing importation by

clusion of the Court of Appeals that there was no abuse of discretion is amply supported by the record. In fact, considered against the whole of the evidence as it developed at the trial, the motion appears to have been even more insubstantial than the trial judge thought when he ruled on the motion. The lack of any reasonable explanation for the delay and the careful lack of candor displayed in the affidavits on the motions fully justified the denial. See *Heflin* v. *United States*, 223 F. 2d 371 (C. A. 5).

In his first, generalized, affidavit, petitioner stated that it was believed that the interrogatories would "either serve to impeach testimony of the German Customs agent or contradict the said testimony" (R. I, 15). Nowhere, in the attempt to meet the requirement of specificity, was it ever suggested that Brukirer would deny the statements the agent testified he had made in trying to get the watch movements released. Nowhere was there any attempt to specify the source of the alleged new version of the transactions said to be given by Brukirer. Even in the final hour, when Brukirer suddenly became available by cable, there was no statement as to what his actual testimony would be.

The explanation of the delay in making the application is also unconvincing. It would hardly take from May to July to learn that a person, domiciled in Ger-

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a false statement; 19 U. S. C. 1484, requiring an entry at customs by the consignee of imported merchandise; and 19 U. S. C. 1485, requiring a true declaration in the invoice. Particularly in view of the modern tendency to depart from the strict rules of pleading in effect when *Keck* was decided (see *United States* v. *Debrow*, 346 U. S. 374), this indictment was sufficient.

many, who was named as a co-defendant in a United States indictment, would not be available as a witness at the trial. And the ease with which Brukirer was reached after the court denied the motion on July 23, so that the motion could still be renewed on July 26 before trial, suggests that more communication was possible than the moving papers disclosed. This is particularly so since the evidence at the trial showed S. Brukirer to be admittedly a relative (Tr. 818–819), if not in fact the brother, of petitioner.[5]

Moreover, the evidence at the trial points up the insignificance of the most favorable testimony which petitioner claimed that Brukirer could give. The testimony of the German customs agent as to Brukirer's statements to him were admissible because they were made in furtherance of the conspiracy, in order to get the watch movements out of the German customs and into the United States (see R. I, 57). Subsequent retractions, after the property had been discovered and seized and the conspiracy ended—and that is the most that petitioner claimed he could get from the interrogatories—would merely have been self-serving declarations of little value. In addition, the Government itself brought out, at the trial, the fact that, immediately after the shipment was seized on January 27th, Brukirer had sent telegrams stating that petitioner's firm (Semrhib Trading Company) had had nothing at all to do with the watch movements.

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[5] The Canadian friend from Poland knew petitioner as Moses Brukirer. Moses had a brother Shloma who, the friend had heard, had settled in Germany (R. II, 173–174, 183).

In short, the totality of the circumstances establish that there was no abuse of discretion, and no prejudice to petitioner.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.
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